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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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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.

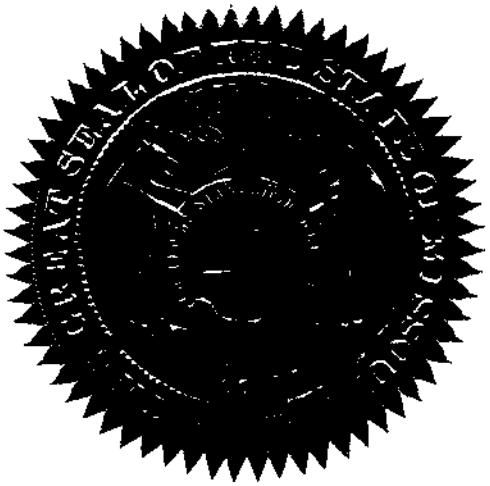
The Secretary of State shall publish all executive orders beginning January 1, 2003, pursuant to section 536.035.2, RSMo Supp. 2010.

EXECUTIVE ORDER
11-22

WHEREAS, Section 105.454(5), RSMo, requires the Governor to designate those members of his staff who have supervisory authority over each department, division or agency of the state government.

NOW THEREFORE, I, JEREMIAH W. (JAY) NIXON, GOVERNOR OF THE STATE OF MISSOURI, by virtue of the authority vested in me by the Constitution and laws of the State of Missouri, do hereby designate the following members of my staff as having supervisory authority over the following departments, divisions or agencies:

Office of Administration	Kristy Manning
Department of Agriculture	Doug Nelson
Department of Conservation	Jeff Harris
Department of Corrections	Edward R. Ardini, Jr.
Department of Economic Development	Doug Nelson
Department of Elementary and Secondary Education	Mike Nietzel
Department of Health and Senior Services	Gail Vasterling
Department of Higher Education	Mike Nietzel
Department of Insurance, Financial Institutions and Professional Registration	Deborah Price
Department of Labor and Industrial Relations	Jeff Harris
Department of Mental Health	Gail Vasterling
Department of Natural Resources	Doug Nelson
Department of Public Safety	Edward R. Ardini, Jr.
Department of Revenue	Jeff Harris
Department of Social Services	Mike Nietzel
Department of Transportation	Daniel Hall
Missouri Housing Development Commission	Rex Burlison
Boards Assigned to the Governor	Damion Trasada
Unassigned Boards and Commissions	Deborah Price



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Missouri, in the City of Jefferson, on this 26th day of July, 2011.

Jeremiah W. (Jay) Nixon
Governor

ATTEST:

Robin Carnahan
Secretary of State

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

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

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

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

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

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

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

Title 2—DEPARTMENT OF AGRICULTURE
Division 30—Animal Health
Chapter 2—Health Requirements for Movement of Livestock, Poultry, and Exotic Animals

PROPOSED AMENDMENT

2 CSR 30-2.020 Movement of Livestock, Poultry, and Exotic Animals Within Missouri. The director is amending subsection (1)(D).

PURPOSE: This amendment will establish the age for Trichomoniasis testing to be in line with entry requirements and other states.

(1) Cattle, Bison, and Exotic Bovids.

(D) Trichomoniasis (Excluding Exotic Bovids).

1. Definitions.

A. Official laboratory—Veterinary Diagnostic Laboratory operated and under the direction of the state veterinarian, University of Missouri Veterinary Medical Diagnostic Laboratory, or other diagnostic laboratories approved by the state veterinarian.

B. Positive Trichomoniasis (*Tritrichomonas foetus*) bull—male bovine which has ever tested positive for Trichomoniasis (*Tritrichomonas foetus*).

C. Trichomoniasis—venereal disease of cattle caused by the protozoan parasite species of *Tritrichomonas foetus*.

D. Positive Trichomoniasis (*Tritrichomonas foetus*) herd—group of bovines that have commingled in the previous breeding season and in which an animal (male or female) has had a positive diagnosis for *Tritrichomonas foetus*.

E. Negative Trichomoniasis (*Tritrichomonas foetus*) herd—a group of bovines that have been commingled in the previous breeding season and all test-eligible bulls have tested negative for *Tritrichomonas foetus* within the previous twelve (12) months.

F. Test-eligible animal—any bull at least *[thirty (30)]* **twenty-four (24)** months of age or any non-virgin bull that is sold, leased, bartered, or traded in Missouri.

G. Negative Trichomoniasis (*Tritrichomonas foetus*) bull—a bull from a negative Trichomoniasis herd with a series of three (3) negative cultures at least one (1) week apart or one (1) negative PCR test for *Trichomoniasis foetus* or two (2) negative PCR if commingled with a positive herd.

2. All breeding bulls (excluding exotic bovids) sold, bartered, leased, or traded within the state shall be—

A. Virgin bulls not more than twenty-four (24) months of age as determined by the presence of both permanent central incisor teeth in wear, or by breed registry papers; or

B. Tested negative for Trichomoniasis with an official culture test or official Polymerase Chain Reaction (PCR) test by an approved diagnostic laboratory within thirty (30) days prior to change in ownership or possession within the state.

(I) Bulls shall be tested three (3) times not less than one (1) week apart by an official culture test or one (1) time by an official PCR test.

(II) Shall be identified by official identification at the time the initial test sample is collected and the official identification recorded on the test documents.

(III) Bulls that have had contact with female cattle subsequent to or at the time of testing must be retested prior to movement.

C. The official identification, test results, date of test, test performed, and laboratory where test was performed should be included on the certificate of veterinary inspection.

3. If the breeding bulls are virgin bulls and less than *[thirty (30)]* **twenty-four (24)** months of age, they shall be*[:]*—

A. Individually identified by official identification; and

B. Accompanied with a breeder's certification of virgin status signed by the breeder or his representative attesting that they are virgin bulls.

C. The official identification number shall be written on the breeder's certificate.

4. Bulls going directly to slaughter are exempt from Trichomoniasis testing.

5. *Tritrichomonas foetus* positive herd—

A. Shall be quarantined or sold directly to slaughter or to a licensed livestock market for slaughter only and shipped on a VS 1-27 permit.

(I) Any non-virgin female or female twelve (12) months of age or older may be sold directly to slaughter and move on a VS 1-27 or remain quarantined.

(II) Positive bulls shall be sent directly to slaughter or to a licensed livestock market for slaughter only and shipped on a VS 1-27 permit.

(III) Positive animals shall be identified by a state issued temper-evident eartag; and

B. The quarantine shall be released upon the following:

(I) All bulls in a positive *Tritrichomonas foetus* herd shall have tested negative to three (3) consecutive official *Tritrichomonas foetus* culture tests or two (2) consecutive official *Tritrichomonas foetus* PCR tests at least one (1) week apart. The initial negative test is included in the series of negative tests required; and

(II) Female(s) has a calf at side (with no exposure to other than known negative *Tritrichomonas foetus* bulls since parturition), has one hundred twenty (120) days of sexual isolation, or is determined by an accredited veterinarian to be at least one hundred twenty (120) days pregnant.

6. All positive *Tritrichomonas foetus* test results must be reported to the state veterinarian within seventy-two (72) hours of confirmation.

AUTHORITY: section 267.645, RSMo 2000. Original rule filed April 18, 1975, effective April 28, 1975. For intervening history, please consult the ***Code of State Regulations****. Amended: Filed July 26, 2011.*

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Department of Agriculture, Taylor H. Woods, 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 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 provisions for changes made in the statutes that were effective April 27, 2011.

(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;

*[(II)]***(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**

(EEE) 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. Amended: Filed July 22, 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 State Veterinarian, Dr. Taylor Woods, PO Box 630, Jefferson City, MO 65102-0630. 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 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), (1)(X), (2)(E), (8)(C), and (8)(D) and paragraph (11)(I)3.; and renumbering the affected subsections.

PURPOSE: This amendment establishes provisions for changes made in the statutes that were effective April 27, 2011. This amendment also defines requirements for facilities designated as Blue Ribbon Kennels.

(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.

(X) Facilities designated as Blue Ribbon Kennels shall meet the following additional requirements:

1. The licensee must have no violations cited during the past year;

2. The premise must be neat and free of clutter, it must be mowed and kept free of junk, the buildings must be in good repair, and it should reflect a positive image to the general public;

3. The kennel must have a written biosecurity plan with signs posted that contain instructions for entry;

4. All dogs must be identified by microchip upon change in ownership; and

5. The licensee must be a member of the Missouri Pet Breeders Association or the Professional Pet Association and they must maintain twenty (20) hours of continuing education.

(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. Amended: Filed July 22, 2011.*

PUBLIC COST: This proposed amendment is estimated to cost the Missouri Department of Agriculture, Animal Care Program five thousand four hundred forty dollars ($5,440) in the aggregate for veterinary care and health certification forms to be furnished by the state veterinarian.

PRIVATE COST: This proposed amendment is estimated to cost private entities licensed under this act a total of one hundred thirty-four thousand four hundred eight dollars and ninety cents ($134,408.90) in additional licensing fees. All licensees, regardless of business volume, would pay an estimated fifty-two thousand nine hundred seventy-five dollars ($52,975) for administering Operation Bark Alert, eighty (80) commercial breeders and dealers would pay an estimated thirty-four thousand five hundred ninety-four dollars ($34,594) in

additional licensing fees, fifty (50) boarding kennels would pay an estimated twenty-four thousand one hundred ninety-three dollars and ninety cents ($24,193.90) in additional licensing fees, forty (40) privately-run shelters would pay an estimated twenty thousand twenty-six dollars ($20,026) in additional licensing fees, and twelve (12) pet shops would pay an estimated two thousand six hundred twenty dollars ($2,620) in additional licensing fees. This proposed amendment is estimated to cost as many as nine hundred ninety (990) breeders forty-nine thousand five hundred dollars ($49,500) to $1,584,000 for veterinary examinations.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with State Veterinarian, Dr. Taylor Woods, PO Box 630, Jefferson City, MO 65102-0630. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

FISCAL NOTE
PUBLIC COST

I. Department Title: 2 Department of Agriculture
Division Title: 30 Animal Health
Chapter Title: 9 Animal Care Facilities

Rule Number and Name:	2 CSR 30-9.020 Animal Care Facilities Rules Governing Licensing, Fees, Reports, Record Keeping, Veterinary Care, Identification, and Holding Period.
Type of Rulemaking:	Proposed

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Missouri Department of Agriculture Animal Care Program	$5,440.00

III. WORKSHEET

Individual health certification for each covered dog must be recorded on forms furnished by the state veterinarian. Written program of veterinary care for review of disease prevention techniques, vaccination protocols, parasite protocols, nutrition, and guidance on preventative care. 10,000 forms @ $0.17 = $1,700.00. Individual health certification for each covered dog must be recorded on forms furnished by the state veterinarian. 22,000 forms @ $0.17 = $3,740.00.

V. ASSUMPTIONS

Cost estimates based upon estimate from state printing services.

FISCAL NOTE
PRIVATE COST

I. Department Title: 2 Department of Agriculture
Division Title: 30 Animal Health
Chapter Title: 9 Animal Care Facilities

Rule Number and Title:	2 CSR 30-9.020 Animal Care Facilities Rules Governing Licensing, Fees, Reports, Record Keeping, Veterinary Care, Identification, and Holding Period.
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:
80	**Breeders and Dealers**	**$34,594.00**
50	**Boarding Kennels**	**$24,193.90**
40	**Animal Shelters, Rescues, and Contract Kennels**	**$20,026.00**
12	**Pet Shops**	**$2,620.00**
2119	**ACFA licensees $25.00 fee for Bark Alert**	**$52,975.00**
990	**Breeders owning >10 intact females and selling pets – Veterinary Examinations**	**$49,500.00 to $1,584,000.00**

III. WORKSHEET

80 licensed commercial pet breeders and dealers @ >400 animals per capita
34,594 animals X $1.00 per animal sold, traded, bartered, brokered, etc.
50 licensed boarding kennels @ $.10 >4,000 board days per capita
241,939 board days X $.10 per board day
40 licensed animal shelters, rescues, and contract kennels @ >400 animals per capita
20,026 animals X $1.00 per animal sold, traded, bartered, adopted out, etc.
12 licensed pet shops @ >400 animals per capita
2, 620 animals X $.10 per animal sold, traded, bartered, brokered, etc.
2,119 ACFA-licensees subject to sections 273.325 through 273.357
2,119 licensees X $25.00 per licensee
990 licensed breeders and dealers owning >10 intact females and selling pets
$50 to $200 per hour for veterinary services

IV. ASSUMPTIONS

Per capita assumptions based on 2011 license renewal data for current licensees.
Bark Alert assumptions based on current licensee numbers.
Veterinary care assumptions based on informal polling of attending veterinarians.

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

PROPOSED AMENDMENT

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

PURPOSE: This amendment establishes provisions for changes made in the statutes that were effective April 27, 2011. This amendment also establishes operation enhancements for facilities licensed under the Animal Care Facilities Act.

(1) Facilities and Operating Standards.

(C) Sheltered Housing Facilities.

1. Heating, cooling**,** and temperature. The sheltered part of sheltered housing facilities for animals must be sufficiently heated and cooled when necessary to protect the dogs and cats from temperature extremes and to provide for their health and well-being. The ambient temperature in the sheltered part of the facility must not fall below fifty degrees Fahrenheit (50 °F) or ten degrees Celsius (10 °C) for animals not acclimated to lower temperatures, for those breeds that cannot tolerate lower temperatures without stress and discomfort (such as short-haired breeds)**,** and for sick, aged, young**,** or infirm animals, except as approved by the attending veterinarian. Dry bedding, solid resting boards, or other methods of conserving body heat must be provided when temperatures are below fifty degrees Fahrenheit (50 °F) or ten degrees Celsius (10 °C). The ambient temperature must not fall below forty-five degrees Fahrenheit (45 °F) or seven *[point two]* **and two-tenths** degrees Celsius (7.2 °C) for more than four (4) consecutive hours when animals are present*[,]* and must not rise above eighty-five degrees Fahrenheit (85 °F) or twenty-nine *[point five]* **and five-tenths** degrees Celsius (29.5 °C) for more than four (4) consecutive hours when animals are present.

2. Ventilation. The enclosed or sheltered part of sheltered housing facilities for animals must be sufficiently ventilated when animals are present to provide for their health and well-being*[,]* and to minimize odors, drafts, ammonia levels**,** and moisture condensation. Ventilation must be provided by windows, doors, vents, fans**,** or air conditioning. Auxiliary ventilation, such as fans, blowers**,** or air conditioning**,** must be provided when the ambient temperature is eighty-five degrees Fahrenheit (85 °F) or twenty-nine *[point five]* **and five-tenths** degrees Celsius (29.5 °C) or higher.

3. Lighting. Sheltered housing facilities for animals must be lighted well enough to permit routine inspection and cleaning of the facility and observation of the animals. Animal areas must be provided a regular diurnal lighting cycle of either natural or artificial light. Lighting must be uniformly diffused throughout animal facilities and provide sufficient illumination to aid in maintaining good housekeeping practices, adequate cleaning, adequate inspection of animals**,** and for the well-being of the animals. Primary enclosures must be placed so as to protect the animals from excessive light.

4. Shelter from the elements. Animals must be provided with adequate shelter from the elements at all times to protect their health and well-being. The shelter structures must be large enough to allow each animal to sit, stand**,** and lie in a normal manner and to turn about freely.

5. Surfaces.

A. The following areas in sheltered housing facilities must be impervious to moisture:

(I) Indoor floor areas in contact with the animals;

(II) Outdoor floor areas in contact with the animals, when the floor areas are not exposed to the direct sun*[,]* or are made of a hard material such as wire, wood, metal**,** or concrete; and

(III) All walls, boxes, houses, dens**,** and other surfaces in contact with the animals.

B. Outside floor areas in contact with the animals and exposed to the direct sun may consist of *[compacted earth, absorbent bedding, sand,]* **fine** gravel **in raised beds** or grass **with adequate drainage**.

(D) Outdoor Housing Facilities.

1. Restrictions. The following categories of animals must not be kept in outdoor facilities, unless that practice is specifically approved by the attending veterinarian:

A. Animals that are not acclimated to the temperatures prevalent in the area or region where they are maintained;

B. Animal breeds that cannot tolerate the prevalent temperatures of the area without stress or discomfort (such as short-haired breeds in cold climates);

C. Sick, infirm, aged**,** or young animals; and

D. When their acclimation status is unknown, animals must not be kept in outdoor facilities when the ambient temperature is less than fifty degrees Fahrenheit (50 °F) or ten degrees Celsius (10 °C).

2. Shelter from the elements. Outdoor facilities for animals must include one (1) or more shelter structures that are accessible to each animal in each outdoor facility*[,]* and that are large enough to allow each animal in the shelter structure to sit, stand**,** *[and]* lie in a normal manner, and to turn about freely. In addition to the shelter structures, one (1) or more separate outside areas of shade must be provided **by means of trees, bushes, suspended shadecloth, or permanent awnings**, large enough to contain all the animals at once and protect them from the direct rays of the sun. **Structures constructed for shade must be designed and constructed in such a manner that they do not rely on fencing or shelters for their suspension above the enclosure, they must be of permanent-type construction, and they must be kept out of reach of any dogs within the primary enclosure.** Shelters in outdoor facilities for animals must contain a roof, four (4) sides**,** and a floor*[,]* and must—

A. Provide the animals with adequate protection and shelter from the cold and heat;

B. Provide the animals with protection from the direct rays of the sun and the direct effect of wind, rain**,** or snow;

C. Be provided with a wind break and rain break at the entrance; and

D. Contain clean, dry bedding material if the ambient temperature is below fifty degrees Fahrenheit (50 °F) or ten degrees Celsius (10 °C). Additional clean, dry bedding is required when the temperature is thirty-five degrees Fahrenheit (35 °F) or one *[point seven]* **and seven-tenths** degrees Celsius (1.7 °C) or lower.

3. Construction. Building surfaces in contact with animals in outdoor housing facilities must be impervious to moisture. Metal barrels, cars, refrigerators or freezers, and the like must not be used as shelter structures. The floors of outdoor housing facilities may be of *[compacted earth, absorbent bedding, sand,]* **fine** gravel **in raised beds** or grass **with adequate drainage***[,]* and must be replaced if there are any prevalent odors, diseases, insects, pests**,** or vermin. All surfaces must be maintained on a regular basis. Surfaces of outdoor housing facilities, including houses, dens**,** and the like**,** that cannot be readily cleaned and sanitized, must be replaced when worn or soiled.

(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, 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; and

(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. The coating must be maintained in such a manner that the animal is not allowed to come into contact with the metal. 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;

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]* **and ninety-six hundredths** 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]* **and seventy-two hundredths** centimeters (45.72 cm) to reduce injury to kittens;

(II) Cats up to and including eight *[point eight]* **and eight-tenths** (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]* **twenty-eight hundredths** (0.28) square meters;

(III) Cats over eight *[point eight]* **and eight-tenths** (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]* **thirty-seven hundredths** (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]* **is** 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.]

(IV) Permanent tethering of dogs is prohibited for use as a primary enclosure. Temporary tethering of dogs is prohibited for use as a primary enclosure unless written approval is obtained from the state veterinarian.

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 (2) 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 (2) 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. Until January 1, 2016, 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 under limited circumstances and only by written approval of the director of agriculture. Any exemption must be requested in writing and will be considered only on an individual and annual basis. Likewise, such exemption may be revoked for failure to comply with this section or for violations of the Animal Care Facilities Act or of any rules promulgated pursuant thereto. At a minimum, the following requirements must be met for such consideration:

(I) The primary enclosures must exceed the applicable space standards on their own and cannot rely on the exercise yard to count toward space requirements;

(II) The ambient temperature of the indoor facility must not fall below forty-five degrees Fahrenheit (45 °F) or seven and two-tenths degrees Celsius (7.2 °C), or rise above eighty-five degrees Fahrenheit (85 °F) or twenty-nine and four-tenths degrees Celsius (29.4 °C);

(III) The lighting within the indoor facility must include natural lighting;

(IV) The outdoor exercise yard must be fenced and maintained in a manner that it protects the animals from injury and contains the animals securely;

(V) The outoor exercise yard must include one (1) or more shelter structures that are accessible to each animal and large enough to allow each animal to sit, stand, and lie in a normal manner and turn about freely;

(VI) The outdoor exercise yard must be large enough to allow the dogs to achieve a full running stride. The yard must be at least ten (10) times the space calculated from part (1)(F)3.A.(I) of this rule (minimum amount of floor space), and the dimensions must be included in the written request for exemption;

(VII) The exercise plan must include a schedule or journal that allows for verification of compliance;

(VIII) Application for such exemption shall be specific to the breed of dog and signed by the attending veterinarian for that facility along with the department's program veterinarian; and

(IX) Prior to approval by the director of agriculture, request for such exemption must be posted publicly for comment on the department's website for a period not shorter than thirty (30) days.

D. 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]* **and two-tenths** 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 [1994] **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. Amended: Filed July 22, 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 is estimated to cost as many as nine hundred ninety (990) breeders ninety-nine thousand dollars ($99,000) to $1,980,000 for facility enhancements.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with State Veterinarian, Dr. Taylor Woods, PO Box 630, Jefferson City, MO 65102-0630. 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: 2 Department of Agriculture
Division Title: 30 Animal Health
Chapter Title: 9 Animal Care Facilities

Rule Number and Title:	2 CSR 30-9.030 Animal Care Facilities Minimum Standards of Operation and Transportation.
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:
990	**Breeders owning >10 intact females and selling pets**	**$99,000.00 to $1,980,000.00**

III. WORKSHEET

990 licensed breeders subject to 273.345, RSMo (>10 intact females & selling pups) @ $100.00 to $2,000.00 on average, per facility.

IV. ASSUMPTIONS

Assumptions for facility enhancements to comply with 2 CSR 30-9.030.

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

PROPOSED AMENDMENT

11 CSR 45-5.200 Progressive Slot Machines. The commission is amending section (2).

PURPOSE: This amendment makes a clarification to the reconciliation process of the progressives.

(2) A meter that shows the accurate amount of the progressive jackpot must be conspicuously displayed at or near the machines to which the jackpot applies. At a minimum, on the same day each week while the casino is closed, each licensee shall record the amount displayed on each progressive's top award jackpot meter at the licensee's establishment, except for wide-area progressive systems*[, progressive systems which cause participating electronic gaming devices (EGDs) to become disabled when communication is lost with the progressive controller,]* and *[EGDs which have]* **stand-alone** progressive**s where the** software **for the progressive is** embedded within the EGD's*[']* Critical Program Storage Media (CPSM). The top award jackpot amount shall be reconciled to the system meters by multiplying the progression rate by the amount-in for the period between which the meter amounts were recorded, less any jackpots that have occurred plus any reset amounts. In order to perform this reconciliation, the top award jackpot on these local progressive games shall require the EGD to lock-up requiring a hand-paid jackpot. The licensee authorized to provide a wide-area progressive system shall perform the required reconciliation for each system provided by such licensee. At the conclusion of the reconciliation, if a variance exists between the amount shown on each progressive jackpot meter and the expected amount, the licensee shall document the variance amount. The licensee shall make the necessary adjustment(s) to ensure the correct amount is displayed by the end of the gaming day **following the day** on which the reconciliation occurred. Explanations for meter reading differences or adjustments thereto shall be maintained with the progressive meter reading sheets. In addition to the weekly reconciliation, each licensee shall record the **top award jackpot** progressive meter display amount*[s]* once each banking day **for each non-exempt progressive EGD** to ensure jackpot resets occurred properly, to determine whether the meters incremented since the last reading**,** and to identify any obvious atypical results which could indicate there is a problem with the progressive meter. If known variances are discovered during the daily review, which require a change to the meter display of one dollar ($1) or more, the meter display shall be adjusted by the end of the gaming day. Each licensee shall record the base amount of each progressive jackpot the licensee offers.

AUTHORITY: section 313.004, RSMo 2000 and sections 313.800 and 313.805, RSMo Supp. 2010. Emergency rule filed Sept. 1, 1993, effective Sept. 20, 1993, expired Jan. 17, 1994. Emergency rule filed Jan. 5, 1994, effective Jan. 18, 1994, expired Jan. 30, 1994. Original rule filed Sept. 1, 1993, effective Jan. 31, 1994. For intervening history, please consult the ***Code of State Regulations****. Amended: Filed July 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 any private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Gaming Commission, PO Box 1847, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. A public hearing is scheduled for October 19, 2011, at 10:00 a.m., in the Missouri Gaming Commission's Hearing Room, 3417 Knipp Drive, Jefferson City, Missouri.*

Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 3—State Sales Tax

PROPOSED RESCISSION

12 CSR 10-3.894 Animal Bedding—Exemption. This rule interpreted the sales tax law as it applied to animal bedding.

PURPOSE: This rule is being rescinded because it has been incorporated into 12 CSR 10-110.910(3)(D) Livestock.

AUTHORITY: section 144.270, RSMo 1994. Emergency rule filed Aug. 18, 1994, effective Aug. 28, 1994, expires Dec. 25, 1994. Emergency amendment filed Dec. 9, 1994, effective Dec. 26, 1994, expired April 24, 1995. Original rule filed Aug. 18, 1994, effective Feb. 26, 1995. Rescinded: Filed July 26, 2011.

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

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

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

Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 4—State Use Tax

PROPOSED RESCISSION

12 CSR 10-4.628 Accrual Basis Reporting. This rule defined gross receipts and clarified how vendors reported use tax when their accounting method approximated gross receipts.

PURPOSE: This rule is being rescinded because it has been incorporated in or superseded by 12 CSR 10-102.100 Bad Debts Credit or Refund and by 12 CSR 10-103.560 Accrual vs. Cash Basis of Accounting.

AUTHORITY: section 144.705, RSMo 1994. Original rule filed Oct. 24, 1990, effective March 14, 1991. Rescinded: Filed July 26, 2011.

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

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

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

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

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

Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 4—Wildlife Code: General Provisions

ORDER OF RULEMAKING

By the authority vested in the Conservation Commission under sections 40 and 45 of Art. IV, Mo. Const., the commission amends a rule as follows:

3 CSR 10-4.130 Owner May Protect Property; Public Safety **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on July 1, 2011 (36 MoReg 1615). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Missouri Department of Conservation received two (2) comments on the proposed amendment.

COMMENT #1: Blake Hurst, President of the Missouri Farm Bureau, suggested that landowners whose property is damaged by elk have the right to destroy those animals without first seeking approval from the Department of Conservation.
COMMENT #2: Brent Haden, Regulatory Counsel for the Missouri Cattlemen's Association, suggested that landowners should be allowed to capture or kill any animal that is causing property damage without first seeking approval from the Department of Conservation.
RESPONSE: The department did not recommend changes based on these comments to the Conservation Commission, and the commission did not make any changes to the content of this amendment.

Title 6—DEPARTMENT OF HIGHER EDUCATION
Division 10—Commissioner of Higher Education
Chapter 2—Student Financial Assistance Program

ORDER OF RULEMAKING

By the authority vested in the commissioner of Higher Education under section 173.240, RSMo Supp. 2010, the commissioner adopts a rule as follows:

6 CSR 10-2.180 Minority and Underrepresented Environmental Literacy Program is **adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on April 1, 2011 (36 MoReg 980–982). No changes have been made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 6—DEPARTMENT OF HIGHER EDUCATION
Division 10—Commissioner of Higher Education
Chapter 2—Student Financial Assistance Program

ORDER OF RULEMAKING

By the authority vested in the commissioner of Higher Education under section 160.545, RSMo Supp. 2010, as transferred to the Missouri Department of Higher Education by Executive Order 10-16, dated January 29, 2010, the commissioner adopts a rule as follows:

6 CSR 10-2.190 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on April 1, 2011 (36 MoReg 982–984). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The commissioner of higher education received comments on the proposed rule from forty-five (45) sources.

Following is a list of the individuals who commented on the proposed rule:

COMMENT #1: Missouri School Boards' Association

COMMENT #2: St. Joseph School District

COMMENT #3: Missouri School Boards' Association

COMMENT #4: Missouri School Boards' Association

COMMENT #5: Sherry Wilson

COMMENT #6: Beth Collins

COMMENT #7: Missouri School Boards' Association

COMMENT #8: Rick Lowrance

COMMENT #9: A+ Advisory Board at Parkview High School of the Springfield School District; A+ Advisory Committee at Blue Eye R-V High School; Lisa Black-Schwandt; Addye Buckley-Burnell; Joel Easter; Garrett Hawkins; and Charlotta Poppen

COMMENT #10: A+ Advisory Board at Parkview High School of the Springfield School District; A+ Advisory Committee at Blue Eye R-V High School; Jennifer Bishop; Lisa Black-Schwandt; Addye Buckley-Burnell; Sondra Caffey; Joel Easter; Deborah Good; Garrett Hawkins; Linda Johns; Sherry LuCerne; Missouri School Boards' Association; Ashley Moyer; and Charlotta Poppen

COMMENT #11: A+ Advisory Board at Parkview High School of the Springfield School District; Marlena Brazeal; Lee's Summit R-7 School District; Sherry LuCerne; and Marsha Patterson

COMMENT #12: Sharon Maslowsky; Jeanie White; and Missouri School Boards' Association

COMMENT #13: Sondra Caffey; Billy Coyle; Marsha Patterson; Dr. Herb Schade; Amber Shelton

COMMENT #14: Dr. Nelson Bryant

COMMENT #15: Deborah Grassi

COMMENT #16: Matthew Pearce

COMMENT #17: Missouri School Boards' Association and Jennifer Renegar

COMMENT #18: Deborah Grassi

COMMENT #19: Missouri School Boards' Association

COMMENT #20: A+ Advisory Board at Parkview High School of the Springfield School District; A+ Advisory Committee at Blue Eye R-V High School; Lisa Black-Schwandt; Elaine Brookshier; Dr. Nelson Bryant; Addye Buckley-Burnell; Sondra Caffey; Beth Collins; Maude Coy; Billy Coyle; Jeff Dierking; Joel Easter; Dr. Carrie Eidson; Deborah Grassi; Brianne Griggsby; Lee's Summit R-7 School District; Rick Lowrance; Ashley Moyer; Ellen Newby-Hines; Garrett Hawkins; David and Deborah Holzer; Isaac Holzer; Matthew Pearce; Charlotta Poppen; Amber Shelton; Ann Werland; Jeanie White; Ken Rhuems; and Christi Russell

COMMENT #21: Marlena Brazeal; Sondra Caffey; Deborah Grassi; Linda Johns; Christi Russell; and Amber Shelton

COMMENT #22: Beth Collins; Maude Coy; Sharon Jones; Ken Rhuems; and David Ruhman

COMMENT #23: Marlena Brazeal; Jeff Dierking; Grady Huggins; and Linda Johns

COMMENT #24: Beth Collins; Linda Johns; Missouri Community College Association; and David Ruhman

COMMENT #25: A+ Advisory Committee at Blue Eye R-V High School; Maude Coy; and Ken Rhuems

COMMENT #26: Dr. Nelson Bryant; Missouri Community College Association; and Amber Shelton

COMMENT #27: Beth Collins and David Ruhman

COMMENT #28: Dr. Carrie Eidson and Christi Russell

COMMENT #29: Rick Lowrance and Sherry Wilson

COMMENT #30: Missouri Community College Association

COMMENT #31: Rick Lowrance

COMMENT #32: Jeff Dierking

COMMENT #33: Missouri Community College Association

COMMENT #34: Amber Shelton

COMMENT #35: Sondra Caffey; Linda Johns; Ellen Newby-Hines; David Ruhman; Dr. Herb Schade; and Sherry Wilson

COMMENT #36: Linda Johns; Sondra Caffey; Rick Lowrance; Ellen Newby-Hines; Amber Shelton; and Keven Youngblood

COMMENT #1: One (1) commenter requested removal of the reference to making a good faith effort to secure all federal sources of funding from subsection (1)(K).
RESPONSE: The requirement students make a good faith effort to secure all federal sources of funding is established by section 160.545, RSMo. No changes have been made to this rule as a result of this comment.

COMMENT #2: One (1) commenter requested revision of subsection (1)(L) to include current and future agreements among institutions for reverse transfer of credits and articulation of programs.
RESPONSE: Subsection (1)(L) is a statutory definition from section 160.545, RSMo. No changes have been made to this rule as a result of this comment.

COMMENT #3: One (1) commenter indicated this rule should provide guidance on the content of the written agreement required in paragraph (3)(A)3.
RESPONSE: While a written agreement is required for eligibility, the agreement pertains to the student's actions while in high school and is between the high school and student. As such, it is the department's position that the nature of this agreement should reflect the standards of the local community and the needs of designated high schools, rather than a state mandate. No changes have been made to this rule as a result of this comment.

COMMENT #4: One (1) commenter indicated paragraph (3)(A)5. contradicts section 160.545.7(1), RSMo.
RESPONSE: Paragraph 3 of subsection 7 of section 160.545, RSMo, grants the department the authority to establish "other requirements for reimbursement . . . as determined by rule and regulation of said board." Because of the importance of regular ongoing attendance to student success in postsecondary education and work, this provision is considered appropriate for inclusion in these requirements. Additionally, the department established this policy as a continuation of the program's historical policy. No changes have been made to this rule as a result of this comment.

COMMENT #5: One (1) commenter supported the inclusion of job shadowing in paragraph (3)(A)6.
RESPONSE: The department agrees with this comment. No changes have been made to this rule as a result of this comment.

COMMENT #6: One (1) commenter recommended the revision of paragraph (3)(A)6. so that job shadowing is not allowed for more

than twenty-five percent (25%) of the required hours of tutoring or mentoring.
RESPONSE: The cited paragraph provides that no more than twenty-five percent (25%) of the required fifty (50) hours of tutoring or mentoring may be satisfied through job shadowing. No changes have been made to this rule as a result of this comment.

COMMENT #7: One (1) commenter requested clarification of paragraph (3)(A)6. to indicate students must perform fifty (50) hours of tutoring or mentoring, or up to twelve and one-half (12.5) hours of job shadowing with the remainder of the time spent on unpaid tutoring or mentoring for a total of fifty (50) hours.
RESPONSE: The department disagrees the suggested clarification substantially differs from the cited paragraph. No changes have been made to this rule as a result of this comment.

COMMENT #8: One (1) commenter supported the requirement outlined in paragraph (3)(A)7. if students are allowed to retake the Algebra I end-of-course exam.
COMMENT #9: Seven (7) commenters recommended that students have the ability to retake the Algebra I end-of-course exam required in paragraph (3)(A)7.
RESPONSE TO COMMENTS #8–#9: The department understands that retaking the Algebra I end-of-course exam is allowed under Department of Elementary and Secondary Education policy. No changes have been made to this rule as a result of these comments.

COMMENT #10: The department received fourteen (14) comments related to paragraph (3)(A)7. expressing concern about the ability of students in the eighth and ninth grades to understand the ramifications of the requirement to score proficient or above on the Algebra I end-of-course exam.
COMMENT #11: The department received five (5) comments that the eligibility requirement outlined in paragraph (3)(A)7. is too difficult for students to achieve and would result in the elimination of deserving students.
COMMENT #12: The department received three (3) comments that linking eligibility to a single test in paragraph (3)(A)7. was inappropriate.
RESPONSE TO COMMENTS #10–#12: Students have the ability to retake the Algebra I end-of-course exam and the cited paragraph includes an alternate provision to meet this requirement. No changes have been made to this rule as a result of these comments.

COMMENT #13: The department received five (5) comments that the eligibility requirement outlined in paragraph (3)(A)7. was not essential to the success of students attending vocational or technical schools.
COMMENT #14: One (1) commenter stated that the Algebra I end-of-course exam required in paragraph (3)(A)7. should not be used as it is not standardized. This commenter also was concerned this provision would eliminate some of the students targeted by the program.
COMMENT #15: One (1) commenter suggested that families will experience a financial burden if students do not meet the requirement outlined in paragraph (3)(A)7.
COMMENT #16: One (1) commenter expressed concern the eligibility requirement outlined in paragraph (3)(A)7. could result in less motivation for high school students to take rigorous classes, more high school dropouts, or lower college attendance rates for students who do not meet the requirement.
RESPONSE TO COMMENTS #13–#16: This provision is intended to address the concerns of postsecondary education officials about the preparation and persistence of A+ recipients. Research confirms that students that take and do well in courses of this type are more likely to persist in and graduate from postsecondary education regardless of whether they pursue a technical/vocational or academic credential. It also furthers the goals of the Coordinating Board for Higher Education and the Department of Elementary and Secondary Education that students engage in rigorous high school coursework and graduate ready for college level work. No changes have been made to this rule as a result of these comments.

COMMENT #17: The department received two (2) comments that it is unethical to require middle school students to meet the eligibility requirement outlined in paragraph (3)(A)7. before signing the A+ agreement in high school.
RESPONSE: Students are required to sign the A+ agreement prior to high school graduation. This allows for students to sign the agreement in their senior year. These students are obligated to meet all of the program's eligibility criteria, regardless of whether the criteria were met before the agreement is signed. No changes have been made to this rule as a result of this comment.

COMMENT #18: One (1) commenter expressed concern that retaking the Algebra I end-of-course exam outlined in paragraph (3)(A)7. would negatively affect high school performance reports.
RESPONSE: The Missouri Department of Higher Education (MDHE) has discussed this issue with the appropriate officials of the Department of Elementary and Secondary Education. Although final details are not available at this time, it has been proposed that some accommodation can be provided to districts for students that retake the test only for purposes of A+ eligibility. Work will continue on this accommodation and, consequently, no changes have been made to this rule as a result of this comment.

COMMENT #19: One (1) commenter suggested the rule should define good citizenship, as referenced in paragraph (3)(A)8.
RESPONSE: The department believes that the definition of good citizenship should reflect the standards of the local community as well as the needs of designated high schools and should not be defined by the state. No changes have been made to this rule as a result of this comment.

COMMENT #20: The department received twenty-nine (29) comments that the eligibility limit described in subsection (4)(C) discourages dual credit coursework and, therefore, should not include dual credit coursework.
COMMENT #21: The department received six (6) comments that the eligibility limit described in subsection (4)(C) should not penalize students for changing educational plans or institutions.
COMMENT #22: The department received five (5) comments that the eligibility limit described in subsection (4)(C) would discourage career and technical education articulated credit that students use as a secondary plan of study or to develop skills that may enable them to financially afford college.
COMMENT #23: The department received four (4) comments that the eligibility limit described in subsection (4)(C) should not include coursework that is not applicable to the student's degree program.
COMMENT #24: The department received four (4) comments that the eligibility limit described in subsection (4)(C) should not include courses taken before high school graduation.
COMMENT #25: The department received three (3) comments that the eligibility limit described in subsection (4)(C) will negatively affect student willingness to take rigorous high school courses and will increase the need for remediation at the postsecondary level.
COMMENT #26: The department received three (3) comments that the eligibility limit described in subsection (4)(C) should not be used to manage program costs.
COMMENT #27: The department received two (2) comments that including coursework taken before high school graduation in the eligibility limit described in subsection (4)(C) would penalize high school students taking courses for college credit in order to meet core standards for subjects such as mathematics when the high school credits for the core classes were earned in middle school. These commenters noted a link between lack of continuous enrollment in math and the need for remedial coursework.

COMMENT #28: The department received two (2) comments that including dual credit in the eligibility limit described in subsection (4)(C) would negatively affect high schools' performance reports for the A+ Program.
COMMENT #29: The department received two (2) requests that the percentage of the hours required for a student's program of study described in subsection (4)(C) be increased to minimize the negative effect of this provision on students earning dual credit.
COMMENT #30: One (1) commenter suggested the eligibility limit described in subsection (4)(C) would require standardization of programs between colleges and universities, which would nullify existing articulation agreements between institutions and limit student freedom to pursue dual majors as well as to select institutions with fully articulated transfer agreements.
COMMENT #31: One (1) commenter suggested the eligibility limit described in subsection (4)(C) would be detrimental to students enrolled in pre-requisite classes before entering their programs of study.
COMMENT #32: One (1) commenter recommended that the eligibility limit described in subsection (4)(C) only include coursework that has been paid for by the state of Missouri.
COMMENT #33: One (1) commenter suggested that the eligibility limit described in subsection (4)(C) is inconsistent with other sections of the rule, lacks clarity, and is open to interpretation as well as inconsistent and inaccurate application.
COMMENT #34: One (1) commenter stated that including dual credit coursework in the eligibility limit described in subsection (4)(C) will affect the ability of high schools to be accredited with distinction for offering upper level coursework.
RESPONSE AND EXPLANATION OF CHANGE FOR COMMENTS #20–#34: The eligibility limit is intended to support the expectation that students be prepared for postsecondary education and remain focused on program completion. It is essential to the desired strengthening of the program and must remain relatively restrictive in order to achieve the intended purpose. However, the department agrees there are undesirable consequences to including credit earned prior to high school graduation or not accepted in transfer and has revised subsection (4)(C) to clarify the types of hours to be included and excluded from this limit.

COMMENT #35: The department received six (6) comments that the eligibility limit described in subsection (4)(C) should not penalize students enrolled in developmental courses.
RESPONSE: The percent of A+ eligible students that require remediation is unacceptably high. To address this situation, the eligibility limit is intended to hold students responsible for completing rigorous high school coursework designed to prepare them for postsecondary study. The inclusion of remedial coursework as part of the limit is necessary to accomplish this goal. No changes have been made to this rule as a result of this comment.

COMMENT #36: One (1) commenter stated that paragraph (4)(E)1. will create an administrative burden and five (5) commenters supported this provision.
RESPONSE: The department received favorable input from financial aid administrators when establishing this policy. While administration of this requirement will create some administrative burden, the additional requirements are not considered onerous and are necessary to ensure program funds are being used productively. No changes have been made to this rule as a result of this comment.

6 CSR 10-2.190 A+ Scholarship Program

(4) Award Policy.

(C) Student eligibility for the A+ Scholarship expires at the earliest of the following, except a student who is eligible at the beginning of a term may receive A+ tuition reimbursement for the full term in which the expiration criterion is met:

1. Forty-eight (48) months after completion of high school coursework;
2. Receipt of an associate's degree; or
3. Completion of one hundred five percent (105%) of the hours required for the program in which the student is currently enrolled.

A. Calculation of the one hundred five percent (105%) shall include:

(I) All known hours completed at any participating A+ institution, including those earned as part of coursework designated as remedial or developmental; and

(II) All hours accepted in transfer by an A+ participating institution from an institution that is ineligible for A+ participation.

B. Calculation of the one hundred five percent (105%) shall not include the following:

(I) Postsecondary hours earned for work performed before high school graduation. Such hours shall include, but not be limited to, those earned through dual credit, dual enrollment, technical education articulation, Advanced Placement, or international baccalaureate programs; and

(II) Hours earned at a postsecondary institution that is ineligible for A+ participation that are not accepted in transfer by an A+ participating institution.

Title 8—DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
Division 10—Division of Employment Security
Chapter 5—Appeals

ORDER OF RULEMAKING

By the authority vested in the Division of Employment Security under section 288.190, RSMo Supp. 2010, and section 288.220.5, RSMo 2000, the division amends a rule as follows:

8 CSR 10-5.010 Appeals to an Appeals Tribunal **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 16, 2011 (36 MoReg 1221). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 10—Air Conservation Commission
Chapter 2—Air Quality Standards and Air Pollution Control Rules Specific to the Kansas City Metropolitan Area

ORDER OF RULEMAKING

By the authority vested in the Missouri Air Conservation Commission under section 643.050, RSMo 2000, the commission rescinds a rule as follows:

10 CSR 10-2.040 Maximum Allowable Emission of Particulate Matter From Fuel Burning Equipment Used for Indirect Heating **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on April 1, 2011 (36 MoReg 985). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Missouri Department of Natural

Resources' Air Pollution Control Program received one (1) similar comment from three (3) different sources: Ameren Corporation, The Empire District Electric Company, and the City of St. Louis Air Pollution Control Program (SLAPCP).

COMMENT: Ameren Corporation, The Empire District Electric Company, and SLAPCP commented that they support the consolidation of the area specific indirect heating rules into one (1) statewide rule.
RESPONSE: The Air Program appreciates support for the consolidation of the area specific indirect heating rules into a single rule. No changes have been made to the rescission as a result of this comment.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 10—Air Conservation Commission
Chapter 3—Air Pollution Control Rules Specific to the Outstate Missouri Area

ORDER OF RULEMAKING

By the authority vested in the Missouri Air Conservation Commission under section 643.050, RSMo 2000, the commission rescinds a rule as follows:

10 CSR 10-3.060 Maximum Allowable Emissions of Particulate Matter From Fuel Burning Equipment Used for Indirect Heating **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on April 1, 2011 (36 MoReg 985). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Missouri Department of Natural Resources' Air Pollution Control Program received one (1) similar comment from three (3) different sources: Ameren Corporation, The Empire District Electric Company, and the City of St. Louis Air Pollution Control Program (SLAPCP).

COMMENT: Ameren Corporation, The Empire District Electric Company, and SLAPCP commented that they support the consolidation of the area specific indirect heating rules into one (1) statewide rule.
RESPONSE: The Air Program appreciates support for the consolidation of the area specific indirect heating rules into a single rule. No changes have been made to the rescission as a result of this comment.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 10—Air Conservation Commission
Chapter 4—Air Quality Standards and Air Pollution Control Regulations for the Springfield-Greene County Area

ORDER OF RULEMAKING

By the authority vested in the Missouri Air Conservation Commission under section 643.050, RSMo 2000, the commission rescinds a rule as follows:

10 CSR 10-4.040 Maximum Allowable Emission of Particulate Matter From Fuel Burning Equipment Used for Indirect Heating **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on April 1, 2011 (36 MoReg 985–986). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Missouri Department of Natural Resources' Air Pollution Control Program received one (1) similar comment from three (3) different sources: Ameren Corporation, The Empire District Electric Company, and the City of St. Louis Air Pollution Control Program (SLAPCP).

COMMENT: Ameren Corporation, The Empire District Electric Company, and SLAPCP commented that they support the consolidation of the area specific indirect heating rules into one (1) statewide rule.
RESPONSE: The Air Program appreciates support for the consolidation of the area specific indirect heating rules into a single rule. No changes have been made to the rescission as a result of this comment.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 10—Air Conservation Commission
Chapter 5—Air Quality Standards and Air Pollution Control Rules Specific to the St. Louis Metropolitan Area

ORDER OF RULEMAKING

By the authority vested in the Missouri Air Conservation Commission under section 643.050, RSMo 2000, the commission rescinds a rule as follows:

10 CSR 10-5.030 Maximum Allowable Emission of Particulate Matter From Fuel Burning Equipment Used for Indirect Heating **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on April 1, 2011 (36 MoReg 986). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Missouri Department of Natural Resources' Air Pollution Control Program received one (1) similar comment from three (3) different sources: Ameren Corporation, The Empire District Electric Company, and the City of St. Louis Air Pollution Control Program (SLAPCP).

COMMENT: Ameren Corporation, The Empire District Electric Company, and SLAPCP commented that they support the consolidation of the area specific indirect heating rules into one (1) statewide rule.
RESPONSE: The Air Program appreciates support for the consolidation of the area specific indirect heating rules into a single rule. No changes have been made to the rescission as a result of this comment.

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

ORDER OF RULEMAKING

By the authority vested in the Missouri Air Conservation Commission under section 643.050, RSMo 2000, the commission adopts a rule as follows:

10 CSR 10-6.405 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on April 1, 2011 (36 MoReg 986–988). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Missouri Department of Natural Resources' Air Pollution Control Program received seventeen (17) comments from five (5) sources: The U.S. Environmental Protection Agency (EPA), Ameren Corporation, The Empire District Electric Company, Kansas City Power & Light Company (KCP&L), and the City of St. Louis Air Pollution Control Program (SLAPCP).

COMMENT #1: SLAPCP commented that they support the assumption of compliance for certain emission units described in subsection (1)(C) and propose minor text changes to the language in subsection (1)(C) for clarification.
RESPONSE AND EXPLANATION OF CHANGE: As a result of this comment, suggested text changes to subsection (1)(C) have been made.

COMMENT #2: SLAPCP commented that they propose adding anaerobic digester gas or methane-rich gas from anaerobic treatment of domestic or industrial wastewater because it is similar to landfill gas and should be added to the list of exempt fuels in subsection (1)(C) and (1)(D).
RESPONSE AND EXPLANATION OF CHANGE: As a result of this comment, these subsections have been changed to include other gases using hydrogen sulfide and mercury concentration as parameters for equivalent concentration levels to natural gas.

Due to similar concerns expressed in the following two (2) comments, one (1) response that addresses these concerns is at the end of these two (2) comments.
COMMENT #3: SLAPCP commented that the last sentence in subsection (3)(B) referring to total heat input from all fuel burning units appears to contradict the definitions of Q in subsections (3)(D) and (3)(E) which refers to existing or new source heat inputs rather than both existing and new heat inputs. The use of only existing or new sources to determine the existing or new source rate limit is a change from the current practice.
COMMENT #4: EPA commented that subsection (1)(C) specifies that the heat input from devices described in the rule must be used in the calculation of Q in subsections (3)(D) and (3)(E). To ensure that there is no confusion about what is meant by the calculation of Q, EPA recommends separating the calculation of Q statement from subsection (1)(C) and clarifying in subsections (3)(D) and (3)(E) that the heat input from all fuel burning equipment at the plant, including New Source Performance Standards (NSPS) and other clean units, must be summed to determine Q.
RESPONSE AND EXPLANATION OF CHANGE: Since the inception of the indirect heating rules, the calculation of Q has been a source of confusion. After review of current procedures, Q has been clarified in subsections (3)(D) and (3)(E) to include the total heat input from affected units of both new and existing units, NSPS, and clean fuel units found in subsection (1)(C). Also, the calculation of Q statement that was in subsection (1)(C) was moved to a new, separate subsection (1)(D).

COMMENT #5: SLAPCP commented that it would be clearer for subsections' (3)(D) and (3)(E) tables if the heat input and associated columns were arranged in numerical heat input order, starting with the smallest heat input.
RESPONSE AND EXPLANATION OF CHANGE: As a result of this comment, the rows were rearranged as suggested.

Due to similarities in the following two (2) comments, one (1) response that addresses these comments is at the end of these two (2) comments.
COMMENT #6: SLAPCP commented that subsection (5)(B) and the first sentence of subsection (5)(G) are redundant and should be incorporated into the same subsection under the Test Methods section.
COMMENT #7: EPA commented that subsections (5)(B) and (5)(G) appear to be partially duplicative. EPA recommends the generic reference to stack tests in subsection (5)(G) be supplemented to stack tests, as specified in 10 CSR 10-6.030(5). The second sentence in subsection (5)(G) should remain.
RESPONSE AND EXPLANATION OF CHANGE: As a result of these comments, the stack test language has been merged into subsection (5)(B).

COMMENT #8: SLAPCP commented that the word "incorporated" in subsection (5)(G) should be changed to "by incorporation."
RESPONSE AND EXPLANATION OF CHANGE: As a result of this comment, suggested text changes have been made to subsection (5)(F).

COMMENT #9: SLAPCP suggested that an additional subsection be added to section (5) to include emission estimation methods other than those listed in subsections (5)(A) through (5)(G) for compliance demonstration with department approval.
RESPONSE AND EXPLANATION OF CHANGE: As a result of this comment, an additional subsection has been added to the bottom of section (5), Test Methods, to include other alternate emission estimation methods approved by the department and EPA.

COMMENT #10: EPA commented that the phrase —unless more strict standards apply— in subsection (1)(B) is not clear. If the language is intended to somehow limit the use of tire derived fuel, then Missouri should more carefully describe what it intends by the language.
RESPONSE AND EXPLANATION OF CHANGE: The original intent of this phrase in subsection (1)(B) was to prevent a future discrepancy for any new federal rules that may apply and their limits for tire derived fuel and how it may be classified (as a fuel or a solid waste). However, this language is not needed because, as with any state air rule, sources or units subject to more stringent standards must meet those standards. Therefore, the phrase —unless more strict standards apply— has been removed.

COMMENT #11: EPA commented that many companies are now making plans to convert their fuel burning equipment to fire biomass in lieu of current solid fuels. The particulate matter (PM) rules set limits for wood, but biomass, like switchgrass and corn stover, do not necessarily fit this category. As a consequence, it remains uncertain whether any PM limits apply to biomass operations or not. The department should clarify accordingly. If the department intends to cover such operations, the rule should specify that it applies to this category.
RESPONSE AND EXPLANATION OF CHANGE: Subsection (1)(B) of the proposed rule applies to installations in which fuel is burned for the primary purpose of producing steam, hot water, or hot air or other indirect heating of liquids, gases, or solid and, in the course of doing so, the products of combustion do not come into direct contact with process materials. Biomass would fall into the classification of a solid, liquid, or gaseous fuel, and if a unit utilizing biomass qualifies as an indirect heating unit then biomass fired units would also be subject to the proposed rule. As a result of this comment, biomass has been added to subsection (1)(B) example fuels

to further clarify that this rule applies to applicable biomass operations.

Due to similar concerns expressed in the following four (4) comments, one (1) response that addresses these concerns is at the end of these four (4) comments.

COMMENT #12: EPA commented that the rule should clearly state which form(s) of PM are included in the fuel burning limits. Historically, the PM rule limits have focused only on coarse, filterable PM, as measured by Reference Method 5. The rules should make clear whether the fuel burning limits include condensable emissions or not. If Missouri determines that the limits in 10 CSR 10-6.405 apply only to coarse, filterable PM, then EPA recommends that subsection (5)(B) point explicitly to 10 CSR 10-6.030(5)(A) or (5)(B). If Missouri determines that the PM limits also include condensable emission then subsection (5)(B) should include an additional reference to Reference Method 202, found in 10 CSR 10-6.030(5)(E).

COMMENT #13: Empire District Electric Company commented that the rule is not clear whether or not condensable PM is addressed. They believe that condensable PM is not addressed by or included in the equations in the rule. If condensable PM is to be included in the equations in the rule then the new indirect heating rule should be re-proposed.

COMMENT #14: Ameren Corporation commented that the existing regulations were originally developed to limit the emissions of total filterable PM. While the department can require sources to measure fine PM to better inform any air quality modeling done, fine PM is not a regulatory component of the state implementation plan approved coarse, filterable PM emission limits found in the chapter-specific indirect heating rules that are being consolidated. Therefore, compliance with the proposed rule only applies to total filterable PM. Ameren Corporation suggests that the department add clarification to the proposed rule to indicate this rule applies to total filterable PM and provided suggested rewording for subsection (5)(G).

COMMENT #15: KCP&L commented that the PM regulated by the proposed rule and current area specific indirect heating rules does not include condensable PM. They have complied with these rule requirements in Part 70 Operating Permits using EPA Test Method 5 which is not a test method designed or intended to measure condensable PM. KCP&L requests the department clarify the proposed rule reference in subsection (5)(G) to only include test methods for filterable PM.

RESPONSE AND EXPLANATION OF CHANGE: Coarse, filterable PM is the controlled pollutant in this rule and may be determined using stack test Methods 5 or 17 in 10 CSR 10-6.030(5)(A) or (5)(B). The emission limits in this rule are not intended to include condensable PM. Therefore, as a result of this comment, section (5) has been amended to clarify that only stack test methods 10 CSR 10-6.030(5)(A) or (5)(B) may be used to determine compliance using stack tests.

COMMENT #16: EPA commented that the AP-42 and Factor Information Retrieval (FIRE) databases should probably be removed, or at a minimum significantly demoted, from the hierarchy of PM compliance techniques. AP-42 and other emission factors are not recommended and should be avoided unless they are highly rated or adjusted upward to account for the significant gap in quality inherent in using average ranges of emission rates.

RESPONSE AND EXPLANATION OF CHANGE: The proposed rule applies to indirect heating units located throughout the state which includes facilities and units of all sizes and mainly affecting boilers, process heaters, and smelters. Smaller emission sources subject to this rule rely on EPA published AP-42 and FIRE emission factors for permitting and determining compliance as compared to more expensive stack testing and/or continuous emission monitoring system (CEMS) or Compliance Assurance Monitoring (CAM) plans. Removing the ability for these facilities to use AP-42 and FIRE emission factors may increase compliance cost. As a result of this comment, AP-42 and FIRE emission factors have been retained lower on the hierarchy in section (5).

COMMENT #17: SLAPCP, The Empire District Electric Company, and Ameren Corporation commented that they support the consolidation of the area specific indirect heating rules into one (1) statewide rule.

RESPONSE: The Air Program appreciates support for the consolidation of the area specific indirect heating rules into a single rule. No wording changes have been made to the rule as a result of this comment.

10 CSR 10-6.405 Restriction of Particulate Matter Emissions From Fuel Burning Equipment Used For Indirect Heating

(1) Applicability.

(B) This rule applies to installations in which fuel is burned for the primary purpose of producing steam, hot water, or hot air or other indirect heating of liquids, gases, or solids and, in the course of doing so, the products of combustion do not come into direct contact with process materials. Fuels may include but are not limited to coal, tire derived fuel, coke, lignite, coke breeze, gas, fuel oil, biomass, and wood, but do not include refuse. When any products or byproducts of a manufacturing process are burned for the same purpose or in conjunction with any fuel, the same maximum emission rate limitations shall apply.

(C) An emission unit that is subject to 10 CSR 10-6.070 and in compliance with applicable provisions; or an emission unit fueled by landfill gas, propane, natural gas, fuel oils #2 through #6 (with less than one and two-tenths percent (1.2%) sulfur), and/or other gases (with hydrogen sulfide levels less than or equal to four (4) parts per million volume as measured using ASTM D4084, or equivalent and mercury concentrations less than forty (40) micrograms per cubic meter as measured using ASTM D5954, or ASTM D6350, or equivalent) would be deemed in compliance with 10 CSR 10-6.405.

(D) The heat input from emission units in subsection (1)(C) of this rule must be included in the calculation of Q, the installation's total heat input as defined in subsections (3)(D) and (3)(E) of this rule.

(E) An installation is exempt from this rule if all of the installation's applicable units are fueled only by landfill gas, propane, natural gas, fuel oils #2 through #6 (with less than one and two-tenths percent (1.2%) sulfur), or other gases (with hydrogen sulfide levels less than or equal to four (4) parts per million volume as measured using ASTM D4084, or equivalent and mercury concentrations less than forty (40) micrograms per cubic meter as measured using ASTM D5954, or ASTM D6350, or equivalent) or any combination of these fuels.

(3) General Provisions.

(D) Emission Rate Limitations for Existing Indirect Heating Sources. No person may cause, allow, or permit the emission of particulate matter from existing indirect heating sources in excess of that specified in the following table:

Area of State	Heat Input (mmBtu/hour)	Rate Limits for Existing Sources (pounds/mmBtu)
Kansas City & St. Louis Metropolitan	<10	0.60
	≥ 10 and $\leq 5{,}000$	$E=1.09Q^{-0.259}$
	$>5{,}000$	0.12
Springfield-Greene County & Outstate Missouri	≤ 10	0.60
	>10 and $<10{,}000$	$E=0.90Q^{-0.174}$
	$\geq 10{,}000$	0.18

Where:
E = the maximum allowable particulate emission rate limit for existing sources in pounds per mmBtu of heat input, rounded off to two (2) decimal places; and
Q = the summation of heat input in mmBtu/hour from all affected fuel burning equipment at a source (including existing equipment, new equipment, NSPS units, and other clean units identified in subsection (1)(C) of this rule).

(E) Emission Rate Limitations for New Indirect Heating Sources. No person may cause, allow, or permit the emission of particulate matter in excess of that specified in the following table:

Area of State	Heat Input (mmBtu/hour)	Rate Limits for New Sources (pounds/mmBtu)
Kansas City & St. Louis Metropolitan	< 10	0.40
	≥ 10 and ≤ 1,000	$E=0.80Q^{-0.301}$
	> 1,000	0.10
Springfield-Greene County & Outstate Missouri	≤ 10	0.60
	> 10 and < 2,000	$E=1.31Q^{-0.338}$
	≥ 2,000	0.10

Where:
E = the maximum allowable particulate emission rate limit for new sources in pounds per mmBtu of heat input, rounded off to two (2) decimal places; and
Q = the summation of heat input in mmBtu/hour from all affected fuel burning equipment at a source (including existing equipment, new equipment, NSPS units, and other clean units identified in subsection (1)(C) of this rule).

(5) Test Methods. The following hierarchy of methods shall be used to determine compliance with subsections (3)(D) and (3)(E) of this rule:

(B) Stack tests, as specified in 10 CSR 10-6.030(5)(A) or (5)(B);

(C) Other EPA documents;

(D) Compliance Assurance Monitoring (CAM) Plans as found in a facility operating permit may be used to provide a reasonable assurance of compliance with subsections (3)(D) and (3)(E) of this rule;

(E) Sound engineering calculations;

(F) Any other method, such as AP-42 (Environmental Protection Agency (EPA) *Compilation of Air Pollution Emission Factors*) or Factor Information and Retrieval System (FIRE), approved for the source by incorporation into a construction or operating permit, settlement agreement, or other federally enforceable document; or

(G) Other alternate emission estimation methods not listed in this section when pre-approval is obtained from the department and EPA before using such methods to estimate emissions.

Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 45—Missouri Gaming Commission
Chapter 4—Licenses

ORDER OF RULEMAKING

By the authority vested in the Missouri Gaming Commission under section 313.805, RSMo Supp. 2010, the commission amends a rule as follows:

11 CSR 45-4.030 Application for Class A or Class B License **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 1, 2011 (36 MoReg 988). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A public hearing was held on this proposed amendment on May 18, 2011. No one commented at the public hearing, and no written comments were received.

Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 45—Missouri Gaming Commission
Chapter 10—Licensee's Responsibilities

ORDER OF RULEMAKING

By the authority vested in the Missouri Gaming Commission under section 313.805, RSMo Supp. 2010, the commission amends a rule as follows:

11 CSR 45-10.020 Licensee's and Applicant's Duty to Disclose Changes in Information **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 1, 2011 (36 MoReg 988–989). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A public hearing was held on this proposed amendment on May 18, 2011. No one commented at the public hearing, and no written comments were received.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 35—Children's Division
Chapter 32—Child Care

ORDER OF RULEMAKING

By the authority vested in the Children's Division under section 207.020, RSMo 2000, section 210.112, RSMo Supp. 2010, and *Young v. Children's Division, State of Missouri Department of Social Services*, 284 S.W.3d 553 (Mo. 2009), the director adopts a rule as follows:

13 CSR 35-32.020 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on April 1, 2011 (36 MoReg 989–994). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations.*

SUMMARY OF COMMENTS: The Department of Social Services, Children's Division received twenty-five (25) comments on the proposed rule.

COMMENT #1: A comment was received from Cornerstones of Care which requested the Children's Division to withdraw the published rule as well as the proposed 13 CSR 35-32.030 and re-engage providers in drafting rules that best meet the current and future needs for serving our child welfare population. A similar comment was received from Children's Permanency Partnership which requested the withdrawal of the above-referenced proposed rules. Another comment was received from Missouri Alliance for Children and Families

(MACF) recommending that the Children's Division withdraw both proposed rules.
RESPONSE: The Children's Division is legally required to promulgate regulations governing the contracted case management contracts and is therefore unable to withdraw the regulations. Section 210.112, RSMo, expressly requires the Children's Division to promulgate regulations governing the foster care case management contracts. In addition, the Children's Division is also required to promulgate regulations to administer these contracts pursuant to its rulemaking authority under section 207.020.1, RSMo, and the mandates of the Missouri Supreme Court in *Young v. Children's Div., State Dept. of Social Services*, 284 S.W.3d 553 (Mo. 2009); *Department of Social Services v. Little Hills Healthcare, L.L.C.,* 236 S.W.3d 637 (Mo. banc 2007); and other applicable law. Finally, the Children's Division is promulgating regulations pursuant to a specific request from the Missouri Coalition of Children's Agencies (MCCA) to do so. In a letter dated November 9, 2009, MCCA's president filed a petition pursuant to section 536.041, RSMo, with the Children's Division requesting that the Children's Division promulgate comprehensive regulations governing these contracts. The Children's Division agreed to promulgate regulations pursuant to the request. See also response to comment #2 below. No change has been made as a result of these comments.

COMMENT #2: Another comment was received from Cornerstones of Care which stated that neither the proposed rule or the proposed 13 CSR 35-32.030 meet the intent of HB 1453. A similar comment was received from Missouri Coalition of Children's Agencies which stated the rules are not consistent with the intent of HB 1453 which called for contracts for foster care and case management services in designated regions of the state to achieve specific results for children and families served and payment linked to performance. A comment was received from Alternative Opportunities which stated the rules far exceed the scope of implementation planning. A similar comment was received from Missouri Coalition of Children's Agencies which stated the rules go beyond the scope of implementation plans and dates.
RESPONSE: The Children's Division disagrees that the proposed regulations do not meet the intent of HB 1453 (2004). The Children's Division agrees that the proposed rules cover more than contract "implementation planning." The regulations that the Children's Division is promulgating are fully consistent with the intent of HB 1453 and are more comprehensive than "implementation planning" for the reasons which are summarized below.

First: Section 210.112, RSMo, requires the Children's Division to promulgate comprehensive regulations governing foster care case management contracts. The legislature enacted section 210.112, RSMo, into law in HB 1453 (2004). Section 210.112.4(6), RSMo, and HB 1453 expressly require the Children's Division to promulgate regulations so that "[p]ayment to the children's services providers and agencies shall be made based on the reasonable costs of services, including responsibilities necessary to execute the contract." In addition, section 210.112.8., RSMo, and HB 1453 expressly require that "the children's division shall promulgate and have in effect rules to implement the provisions of this section and, pursuant to this section, shall define implementation plans and dates." The plain language of the statute does not limit the Children's Division's mandate to promulgate regulations to "implementation planning." Instead, the statute expressly requires the Children's Division to promulgate regulations to "implement the provisions of this section." Section 210.112, RSMo, is broadly drafted to require the Children's Division to develop and implement a foster care and child protection/welfare system that is focused on providing the highest quality of services and outcomes for children and families and is expressly subject to the following principles:

- The safety and welfare of children is paramount;
- Providers of direct services to children and their families will be evaluated in a uniform and consistent basis;
- Services to children and their families shall be provided in a timely manner to maximize the opportunity for successful outcomes; and
- Any provider of direct services to children and families shall have the appropriate and relevant training, education, and expertise to provide the highest quality of services possible which shall be consistent with the federal standards, but not less than the standards and policies used by the Children's Division as of January 1, 2004.

Other provisions of section 210.112, RSMo, reference: a competitive procurement process; adherence to laws and regulations; the services which are to be provided, including case planning, permanency planning, and assessments for children under the age of ten (10); location where the services are to be provided; performance evaluation; and payment and incentives. HB 1453 clearly and expressly requires the Children's Division to promulgate broad, comprehensive regulations which are not limited to setting "implementation plans and dates."

Second: Even in the absence of the specific requirements in section 210.112, RSMo, that the Children's Division promulgate comprehensive regulations governing the foster care case management contracts, the Children's Division has a statutory mandate to promulgate comprehensive regulations governing contracts for foster care case management which are not limited to "implementation planning." The Children's Division has the statutory authority to adopt rules and regulations which are necessary or desirable to carry out the duties assigned to the Children's Division by law. See sections 207.020.1(5), (8)–(17) and 660.017, RSMo. Recently, the Missouri Supreme Court has held that the Children's Division is required to adopt policies by promulgating formal regulations in situations where the Children's Division's policies are generally applicable to the public, individuals, or entities impacted by the policies in question. *Young v. Children's Div., State Dept. of Social Services*, 284 S.W.3d 553 (Mo. 2009). In order to comply with its statutory mandate and to carry out the duties assigned to the Children's Division by law, the Children's Division has determined that it is necessary and desirable to promulgate comprehensive regulations which go beyond the scope of "implementation planning."

Third: The contracted case manager provider community specifically asked the Children's Division to promulgate a comprehensive set of regulations governing the administration and content of the foster care case management contracts. MCCA sent a letter to the Children's Division on November 4, 2009, formally requesting that the Children's Division promulgate regulations pursuant to sections 210.112 and 536.041, RSMo. The MCCA represents a broad group of private agencies and providers of foster care case management services through contracts with the Children's Division. In the letter requesting the rule, MCCA correctly pointed out that section 210.112, RSMo, requires the Children's Division to promulgate regulations. MCCA pointed out that the Children's Division cannot accomplish by contract what is required to be accomplished through the promulgation of a rule, citing *NME Hospitals, Inc. v. Dept. of Social Services*, 850 S.W.2d 71 (Mo. 1993). In its letter MCCA argued that the Children's Division had a legal "obligation," at a minimum, to promulgate regulations governing:

- The assessment for "children under ten years old to allow for the least restrictive placement for the child";
- Defining "the flexibility that will take into account children and families on a case-by-case basis";
- The definition of "outcome measures for private and public agencies that 'shall be equal for each program'";
- "Details on the state's expectations for the child's case management plan";
- "Define how the contract shall provide incentives in addition to the costs of services when providers accomplish the goal/outcomes of their contracts; and
- "The payment structure of the children's services providers and agencies that is based on reasonable costs of services."

MCCA also urged the Children's Division "to go further than the legally required elements of the rule to" address contract structure, provide a comprehensive rule on children's services contracts, and to describe the mechanism to allow providers to exit the contract if there is a material change in the contract. The Children's Division agreed to MCCA's request to promulgate regulations and formally notified the Joint Committee on Administrative Rules (JCAR) as required by section 536.041, RSMo, that it intended to promulgate regulations as requested. No change has been made as a result of these comments.

COMMENT #3: Another comment was received from Missouri Coalition of Children's Agencies which questioned if the Department of Social Services had the authority to promulgate the proposed rule or 13 CSR 35-32.030 since the deadline in the statute was missed by six (6) years.
RESPONSE: The Department of Social Services has the statutory authority to promulgate the proposed rule as well as 13 CSR 35-32.030 for all of the reasons set forth in the Children's Division's response to comment #2. No change has been made as a result of these comments.

COMMENT #4: Another comment was received from Alternative Opportunities which stated the proposed rule, as well as the proposed 13 CSR 35-32.030, creates a barrier to the dynamic aspects of the current collaborative responsiveness to the changing aspects of child welfare and foster care case management. Similar comments were received from MCCA which stated the rules would undermine the good public-private working relationships that have evolved, prevent mid-course corrections by the Children's Division or foster care case management agencies, and undermine the current practice of working collaboratively to identify and remedy barriers that stand in the way of better results for children and families. Another comment received from MCCA stated the rules do not allow the Children's Division or foster care case management agencies to reassess and change their approach over time based on data and lessons learned. A similar comment was received from Missouri Alliance for Children and Families which stated additional public and private resources will be required to alter the rules in order to implement needed change. As such, the rules will serve as a detriment to public and private collaboration to improve practice.
RESPONSE: The Children's Division respectfully disagrees with these comments.

The Children's Division is committed to continuing its long standing practice to work closely with our partners and stakeholders in all sectors of the juvenile justice and child welfare system. A collaborative process has been in place since 2004, when the public and private sectors worked together to develop portions of the contract. The Children's Division has worked with private industry since 2004 to develop a public/private child welfare services delivery system in which the paramount consideration is the best interests, safety, and welfare of the children and families served by this system. This regulation has been drafted based on the Children's Division's experience in providing child welfare service and many years of experience administering contracts with private agencies for the provision of these services.

The Department of Social Services is promulgating this regulation at the express request of the private sector. In a letter to the Department of Social Services dated November 4, 2009, MCCA petitioned the Department of Social Services to promulgate comprehensive regulations pursuant to sections 210.112 and 536.041, RSMo. The Department of Social Services has agreed with MCCA that it was required to promulgate regulations and is committed to promulgating regulations. See the response to comment #2.

The Children's Division also disagrees that the regulations do not allow the Children's Division or foster care case management agencies to reassess and change their approach over time based on data and lessons learned. The regulations are largely based on the provisions of the contracts which have been in place for several years. The regulations set out a minimum baseline of performance expectations which are grounded in specific provisions of federal and/or state law, accreditation standards, Children's Division experience, and industry best practices. The Children's Division has consulted with the private sector in developing these regulations and is committed to consulting with the private sector as the Children's Division proceeds to implement these regulations. The Children's Division, for example, met with the chief executive officers of the contracted agencies on February 19, 2010, to fully discuss a change in case assignment methodology, whereby the annual rebuild of caseloads would be eliminated and a change in the incentive payment which would be necessary as the result. The one-for-one case replacement eliminates case management disruption for many children and families each year which was necessary when the contractor's caseload had to be rebuilt with older cases at the end of each contract year. The Children's Division has received complaints from foster parents, juvenile officers, Court Appointed Special Advocates (CASA) volunteers, and legislators regarding the current, annual rebuild process. Under the current case assignment methodology incentives automatically occur if the contractor is meeting or exceeding the permanency expectation as they can serve less children than what they are paid for. Under the one-for-one methodology, the caseload remains constant whereby an incentive payment has to be made. Draft rules related to cost were shared with the private industry in April 2010. A comment period was provided. The Children's Division considered all comments received regarding the draft rules. Some revisions to the rules were made in response to the comments received. The Children's Division also met with the chief executive officers of contracted agencies on June 10, 2011, to discuss the comments to the regulations. The rules contain provisions which the Children's Division does not expect to change over time. The Children's Division expects to continue a collaborative public/private partnership to address the changing needs of the child welfare population. No change has been made as a result of these comments.

COMMENT #5: Another comment was received from MCCA which stated that neither the proposed rule or 13 CSR 35-32.030 strengthen the public/private partnership or allow for "shared accountability" and mutual problem-solving. Much of what is in the proposed rule is more appropriately addressed in procurement, contract negotiation, management of the contract, and through ongoing dialogue between the Children's Division and private agencies.
RESPONSE: The Children's Division respectfully disagrees with this comment for the reasons set out in the Children's Division's responses to comments #2, #3, and #4. The comment does not specify how the regulations do not strengthen the public/private partnership, allow for shared accountability, or allow for mutual problem-solving. The Children's Division is committed to continuing its long standing practice to work closely with partners and stakeholders in all sectors of the juvenile justice and child welfare system, including the private sector. A collaborative process has been in place since 2004, when the public and private sectors worked together to develop portions of the contract. The Children's Division has worked with private industry since 2004 to develop a public/private child welfare services delivery system in which the paramount consideration is the best interests, safety, and welfare of the children and families served by this system. The rules contain provisions which the Children's Division does not expect to change over time. The Children's Division expects to continue a collaborative public/private partnership to address the changing needs of the child welfare population. No change has been made as a result of these comments.

COMMENT #6: Another comment was received from Alternative Opportunities which stated that the rule, as well as 13 CSR 35-32.030, removes or denies access to flexibility and fiscal management. A similar comment was received from Cornerstones of Care which stated the rules do not allow for flexibility to respond to the needs of an ever-changing child welfare population and do not allow for innovation

desired through performance-based contracting initiatives. Another comment was received from Missouri Coalition of Children's Agencies which stated the rules dictate how the contractors must operate which limits their ability to innovate and manage the inherent risks under the contract. In the performance-based approach, an agency says the problem needs to be solved and allows contractors to make bids detailing their proposed solutions (Office of Federal Procurement Policy 2007).
RESPONSE: The comments do not specifically state how the proposed regulations do not allow for flexibility and innovation or otherwise reduce the contractor's ability to manage inherent risks under the contract. The comment does not specify which "risks" are involved and why these risks cannot be managed. This lack of specificity means that it is difficult for the Children's Division to specifically respond to this comment. To the extent that the Children's Division is able to understand the comment, the Children's Division respectfully disagrees with these comments for the reasons set out in the Children's Division's responses to comments #2, #3, #4, and #5. Sections 207.020.1. and 210.112, RSMo, and the principles announced by the Missouri Supreme Court in recent case law require the Department of Social Services to promulgate comprehensive regulations governing foster care case management contracts. The Children's Division must be guided by the specific mandates of section 210.112, RSMo, which legally require that the Children's Division establish a regulatory baseline to assure that, among other things: the safety and best interests of children and families are the paramount consideration; that providers of direct services to children and their families will be evaluated in a uniform and consistent basis; services to children and their families shall be provided in a timely manner to maximize the opportunity for successful outcomes; and any provider of direct services to children and families shall have the appropriate and relevant training, education, and expertise to provide the highest quality of services possible which shall be consistent with the federal standards, but not less than the standards and policies used by the Children's Division as of January 1, 2004. This means that the Department of Social Services is required to implement regulations which provide for, among other things: uniform and consistent criteria for the evaluation of provider programs; setting standards for the provision of services to maximize successful outcomes; and setting baseline standards to make certain that providers have appropriate training, education, and experience. No change has been made as a result of these comments.

COMMENT #7: Another comment was received from Cornerstones of Care which stated that the proposed rule, as well as 13 CSR 35-32.030, is too prescriptive and outlines specific procedural requirements which are best suited for contracts or policy rather than laying out a framework for guiding procurement activities. A similar comment was received from Missouri Coalition of Children's Agencies (MCCA) which requested the rules be withdrawn and refocused on the intent of implementing the provisions of statute which is the procurement process, not the day-to-day practice.
RESPONSE: The Children's Division respectfully disagrees with these comments for the reasons set out in comments #1 through #6, inclusive. No change has been made as a result of these comments.

COMMENT #8: A comment was received from Missouri Coalition of Children's Agencies which stated that the proposed rule, as well as 13 CSR 35-32.030, does not describe a procurement method that serves as the basis for a contract to provide the service. A similar comment was also received from Missouri Alliance for Children and Families which advocated for the public and private sectors to work together to develop rules that guide contract procurement, without constraining practice and procedural flexibility.
RESPONSE: The Children's Division respectfully disagrees with this comment. Section 210.112.2., RSMo, expressly requires that "contracts shall be awarded through a competitive process." The regulations that the Children's Division have promulgated require that contracts be awarded through a competitive bidding process. The regulation contains specific requirements for what is to be included in each contract. Finally, the state of Missouri has clearly defined statutes and regulations governing the process of procurement of state contracts. These statutes and regulations are set forth in detail in Chapter 34, RSMo, and the regulations of the Office of Administration. The Children's Division does not believe that it is necessary, proper, or appropriate to promulgate additional regulations governing procurement which will duplicate statues and regulations which are already in place. No change has been made as a result of these comments.

COMMENT #9: Another comment was received from Cornerstones of Care which stated that the proposed rule, as well as 13 CSR 35-32.030, does not account for the critical elements of foster home maintenance and retention activities. A similar comment was received from Missouri Alliance for Children and Families which stated that the rules do not acknowledge the ongoing service contractors provide to support and retain foster and adoptive families. As agencies have successfully developed a large number of foster and adoptive homes, the cost of retaining these homes continues to increase. The rules do not consider these costs.
RESPONSE AND EXPLANATION OF CHANGE: The Children's Division agrees with these comments and has made revisions to the regulations. The definition of resource development activities found at subsection (3)(B) has been revised. The rule related to cost found at 13 CSR 35-32.030(2)(A)2. was also revised.

COMMENT #10: Another comment was received from Children's Permanency Partnership which stated there was not a method for a formal appeals process regarding both financial and practice issues.
RESPONSE AND EXPLANATION OF CHANGE: A meeting was held with the chief executive officers of the current contracted providers on June 10, 2011, to discuss comments received regarding the proposed rules. The rule will be amended at section (2). Contractors will be held to the same practice standards as Children's Division staff. The contractor is responsible for submitting a bid which shall cover all reasonable costs. The Children's Division must reimburse providers in accordance with the amount of cases and payment awarded. Any payment deductions are clearly outlined in rule and will also be included in the Request for Proposal.

COMMENT #11: Another comment was received from Missouri Alliance for Children and Families which stated that the proposed rule, as well as 13 CSR 35-32.030, applies to all case management services contracted for youth placed in custody.
RESPONSE AND EXPLANATION OF CHANGE: The division agrees with this comment. Both 13 CSR 35-32.020 and 13 CSR 35-32.030 have been amended throughout their text to clarify that the rules only apply to the foster care case management contracts.

COMMENT #12: A comment was received from Jackson County CASA which stated that any agency receiving direct state funding to provide child welfare services (lead contractors) have in place a non-discrimination statement which includes prohibiting discrimination based on sexual orientation, gender identity, or expression.
RESPONSE: Department of Social Services contracts will continue to include all applicable state and federal non-discrimination requirements. Therefore, no change to the rule is necessary in light of this comment.

COMMENT #13: Another comment was received from Missouri Alliance for Children and Families which stated the courts generally terminate jurisdiction of the child immediately upon granting guardianship. In these situations, the family is no longer required to work with the case management agency ninety (90) days post-guardianship as is required by the proposed rule and the proposed 13 CSR 35-32.030.

RESPONSE AND EXPLANATION OF CHANGE: The Children's Division believes that the regulation, as drafted, does not require continued services of the contractor after a guardianship has been finalized. The rule requires ninety (90) days of services after a reunification has occurred, when a child has been returned to his/her parent or guardian. However, to make certain that the language of the regulation is clear, the Children's Division is amending paragraph (3)(A)5. The rule related to cost, 13 CSR 35-32.030(6)(B)2., was also amended. Additionally, 13 CSR 35-32.030(6)(B)2.E. has been amended.

COMMENT #14: Another comment was received from Missouri Alliance for Children and Families which questioned the process which will be used to determine the "sufficient" number of appropriate resources. The Children's Division requested clarification. Missouri Alliance responded with the following: "The draft rule says that the contractor shall develop services which shall best meet the needs of the child and his/her family when they are not readily available in the local community. Since we serve hundreds of families in each community, the number of 'services' that any given family may need could vary and could be very expensive to develop. This could be drug and alcohol programs, job programs, parent education classes—just to name a few. Where does the contractor's responsibility end? The cost of developing the large array of services that families may need could go well beyond the scope of the contract and could be very expensive."
RESPONSE AND EXPLANATION OF CHANGE: The Children's Division agrees with this comment. Subsection (3)(B) was revised. Paragraph (3)(B)1. was also amended. Finally, 13 CSR 35-32.030(2)(A)2. was amended as well.

COMMENT #15: The Children's Division received a comment from Cornerstones of Care which stated references to complying with Children's Division policies do not allow for private agency flexibility in delivering innovative services and may also have a negative financial impact to a provider that could not be anticipated and was not accounted for in the original bid. A similar comment was received from Missouri Coalition of Children's Agencies which stated there were multiple references to the written policies and procedures of the Children's Division throughout the rule which seems to imply "incorporation by reference." Such references would limit the flexibility of the Children's Division as changes could not be made to the written policies and procedures without publishing such in the *Missouri Register* prior to an implementation date. A similar comment was received from Missouri Alliance for Children and Families which stated the rules are overly inclusive of detailed clinical policies and procedures that are routinely evaluated and frequently revised. Another similar comment was received from Missouri Alliance for Children and Families which stated the rules allow Children's Division to make various changes during the contract period that may pose significant financial and other risks to contractors and do not include a process for the contractor to appeal changes or to withdraw from the contract. Another similar comment received from Missouri Alliance for Children and Families stated the written policies and procedures of the Children's Division are changed frequently and the impact of such will not be known until after the contract is awarded and therefore are not fair to the contractor.
RESPONSE AND EXPLANATION OF CHANGE: The Children's Division respectfully disagrees with these comments for the reasons outlined in the division's response to comment #6.

The Children's Division also respectfully disagrees with the comments which imply that the Children's Division is incorporating by reference the Children's Division's policies into the regulation. The Children's Division further disagrees that this regulation will reduce the flexibility of the Children's Division to make changes in Children's Division policies and procedures. This comment represents a fundamental misunderstanding of the relationship between the Children's Division and the contracted case managers under section 210.112, RSMo. The contracts which the Children's Division enacts with contracted case managers under section 210.112, RSMo, are for the care of children who are entrusted to the legal custody of the Children's Division by the juvenile courts. A fundamental tenant of all of the contracts under this section since 2005 has been a requirement that the contractors are being required to implement the policies of the Children's Division. Section 210.112.1., RSMo, required the Department of Social Services to implement a foster care and child protection and welfare system focused on providing the highest quality of services and outcomes for children and families which shall be consistent with the federal standards, but not less than the standards and policies used by the Children's Division as of January 1, 2004. The contractors under this program are therefore required by statute to be contracted to implement the standards and policies of the Children's Division. Requirements related to these principles are included in the current and previous contracts. In addition, in order to benefit from the defense of the immunities granted to contractors under section 207.085.1., RSMo, the contractors are required to adhere to the stated or written policies of the Children's Division. Policies represent baseline standards. Such baseline standards are necessary to provide consistency of care and services as the contractor is providing services to children in the custody of the Children's Division in place of Children's Division employees. Policy is revised for Children's Division employees. Such policy revisions apply to the contractors who are working in place of Children's Division employees. The previous and current contracts were designed in this manner. Some policy revisions such as quarterly foster home visits by the licensing worker may have had a negative financial impact whereas the policy which decreased the required number of visits with foster children per month could have had a positive financial impact.

However, the Children's Division believes that it is important to obtain input from its contractors on the development of policy. The Children's Division has therefore decided to change the language in 13 CSR 35-32.020(2) to provide a mechanism for contractors to review and comment on proposed changes in Department of Social Services internal policies prior to implementation when such policy could have financial or programmatic impact on the contractor. In addition, the Children's Division has removed references to "procedures" of the Division from throughout 13 CSR 35-32.020 and 13 CSR 35-32.030. Innovation and wraparound services are encouraged. The all-inclusive case rate, which can be spent in any manner the contractor deems appropriate, supports such.

COMMENT #16: Another comment was received from Children's Permanency Partnership which stated the proposed 13 CSR 35-32.020 and 13 CSR 35-32.030 require that the first choice for the placement of a child entering alternative care is with grandparents. Children's Division regulations require that the first choice for placement be the non-custodial, non-offending parent. A similar comment was received from Missouri Coalition of Children's Agencies which stated grandparents must be the first choice for children taken into care. However, according to practice, it has always been the non-custodial, non-offending parent that serves as the first placement choice, when that choice is applicable. Another comment was received from Missouri Alliance for Children and Families which stated a search for non-custodial parents for possible placement may be in the best interest of the child before considering placement with other relatives.

RESPONSE: Part (3)(A)3.A.(I) states the contractor must give relatives preference and first consideration as the out-of-home provider when the placement is not contrary to the best interest of the child. This part also states grandparents must be given first consideration for placement. Parents are not considered out-of-home or placement providers and, therefore, priority of placement with a non-offending parent over a grandparent or other relative is consistent with this regulation. The language in the rule is also consistent with sections 210.565 and 210.305, RSMo. No change has been made as a result of these comments.

COMMENT #17: Another comment was received from Missouri Alliance for Children and Families which questioned how a rule can "void" a policy of a private agency.
RESPONSE AND EXPLANATION OF CHANGE: The law requires that contractors must adhere to federal and state standards which are not less than the standards and policies used by the Children's Division as of January 1, 2004. Contractors are being contracted to care for children pursuant to standards set by the Children's Division and therefore their policies and procedures must be consistent with the standards of the Children's Division. However, the Children's Division will clarify the language of section (2).

COMMENT #18: Another comment was received from Missouri Alliance for Children and Families which stated the rule requires a case plan to be developed within fourteen (14) days of referral, which is not enough time to complete an adequate assessment. In another comment, Missouri Alliance for Children and Families noted revisions to current policy could change the required content of the case plan and impact the contractor's ability to complete the case plan within the required time frame.
RESPONSE: The language of this regulation is based on the mandate of section 210.112.5., RSMo. No changes have been made as a result of these comments.

COMMENT #19: Another comment was received from Missouri Alliance for Children and Families which stated if the primary permanency plan is finalized, the concurrent plan cannot be finalized.
RESPONSE AND EXPLANATION OF CHANGE: The division agrees with this comment. The Children's Division has therefore amended paragraph (3)(A)6.

COMMENT #20: Another comment was received from Missouri Alliance for Children and Families which stated that the Children's Division should be held accountable for completing the review of training curriculums within a certain number of days. A delay in approval can negatively impact the contractor's ability to develop homes in a contract year.
RESPONSE: The Children's Division met with the chief executive officers of the current contracted providers on June 10, 2011. It was agreed upon that a time frame for completing the review of training curriculums would be included in the contract for each foster care case management contractor. The needs may vary over time which would impact the time frame needed to review multiple training curriculums. No change has been made as a result of this comment.

COMMENT #21: Another comment was received from Missouri Alliance for Children and Families which stated that the Council on Accreditation requires all children, regardless of age, to have developmental, mental health, and alcohol and drug screenings within thirty (30) days of entry into foster care and when indicated to identify the need for further diagnostic assessment. Medical examinations are then to occur according to well-child guidelines.
RESPONSE: Specific information regarding assessments of children under ten (10) years of age was included in the rule so that the regulation is consistent with sections 210.112.8. and 210.112.4.(e), RSMo. No change has been made as a result of this comment.

COMMENT #22: Another comment was received from Missouri Alliance for Children and Families which stated the rule requires Children's Division to provide the pre-service training for case management personnel unless a contractor decides to expand available training by becoming approved by the Children's Division and then could no longer access training offered by the state. The public and private agencies work together to share training schedules and curriculums so that all stakeholders can obtain training in a timely manner. The language in the rule would serve as a detriment to the public and private partnership.
RESPONSE AND EXPLANATION OF CHANGE: The Children's Division agrees with this comment. The Children's Division has changed the language of subparagraph (6)(B)1.A. to provide for a broader cooperation between the Children's Division and contractors to share training resources.

COMMENT #23: Another comment was received from Missouri Alliance for Children and Families which questioned how elevated needs would be defined.
RESPONSE AND EXPLANATION OF CHANGE: Elevated needs is defined in 13 CSR 35-60.070. Subsection (6)(C) has been amended.

COMMENT #24: Another comment was received from Missouri Alliance for Children and Families which stated that the Children's Division should be held accountable for completing the review and approval process of hiring an individual with a history of child abuse/neglect or criminal activity within ten (10) days.
RESPONSE: The division met with the chief executive officers of the contracted providers on June 10, 2011, and it was agreed that a time frame for completing the review and approval process of hiring an individual with a history of child abuse/neglect or criminal activity would be included in the contract. No change has been made as a result of this comment.

COMMENT #25: Another comment was received from Missouri Alliance for Children and Families which stated the regulation does not discuss the process for how the required number of alternative care homes retained by the contracted agencies will be determined. The number of required homes for initial licensure and retention may add significant, additional cost to contracted providers.
RESPONSE AND EXPLANATION OF CHANGE: The division agrees with this comment. Paragraph (3)(B)1. of the rule has been amended.

13 CSR 35-32.020 Foster Care Case Management Contracts

PURPOSE: This rule establishes the governing provisions for foster care case management contracts to provide a comprehensive system of service delivery for children and their families as set forth in section 210.112.8., RSMo.

(1) This rule shall apply to the foster care case management contracts for the provision of case management services for youth placed in the custody or under the supervision of the Children's Division as provided in section 210.112, RSMo, as well as govern the work of contractors and their officers, agents, and employees pursuant to those contracts.

(2) When providing case management services pursuant to the foster care case management contract with the Children's Division, the contractor shall fully implement and comply with all requirements of federal and state law which apply to permanency planning and shall fully implement and comply with all written policies of the Children's Division which do not conflict with those federal and state laws. This includes, but is not limited to, all regulations promulgated by the Children's Division. The Children's Division, in collaboration with the contractors, shall develop a mechanism for contractors to provide input and feedback regarding pending Children's Division policy prior to implementation when such policy could have financial or programmatic impact on the contractor. Policy of the Children's Division, laws, and regulations shall supersede any policy of the contractor when they conflict.

(3) Contractors shall provide a range of child welfare services including case management services for children in out-of-home placements, family-centered services for parents and legal guardians from whose care the child was removed, and community resource development. Family-centered services shall be defined as the family-focused intervention method utilized by the Children's Division when

working with families to assist them in identifying their strengths and needs and to develop a family plan for change.

(A) Case management services shall include assessments, case planning, placement services, service planning, permanency planning, and concurrent planning. The contractor shall have ongoing contact with the child; the child's out-of-home care provider; the parents or the guardian of the child in care, if parental/guardianship rights have not been terminated; the children remaining in the home; the court; and the members of the child's Family Support Team as defined in the Children's Division's written policies. The contractor must provide case management services that respect the culture, ethnicity, and religious practices of the children and that of his/her family. The contractor shall document all case management services provided in the case record as well as in the automated case management system within the time frames outlined in the contract and in the policies of the Children's Division.

1. Assessments shall be defined as the consideration of all social, psychological, medical, educational, and other factors to determine diagnostic data to be used as a basis for the case plan.

2. Case planning is a process of negotiation between the family case manager, the parent(s) or guardian(s) from whom the child was removed, and the juvenile officer, which describes the services and activities necessary for the purpose of achieving a permanent familial relationship for the child. The case plan shall include the permanency plan as defined in paragraph (3)(A)5. below, the concurrent plan as defined in paragraph (3)(A)6. below, the service plan as defined in paragraph (3)(A)4. below, the time frames in which services will be delivered, and the time frames for obtaining reports from service providers, when applicable.

A. Contractors shall develop a case plan no later than fourteen (14) days after referral of the child's case to the contractor by the Children's Division. The contractor shall submit case plans to the court in accordance with local court procedures.

B. The case plan shall be developed in accordance with the written policies of the Children's Division and applicable federal and state law. In the event that the policies of the Children's Division conflict with applicable federal and state law, federal and state law shall prevail.

C. The contractor's case manager shall give careful consideration to the unique needs of each child and family when developing the case plan.

D. As necessary to effectuate the best interests of the subject child, the case plan may be amended from time-to-time throughout the contract period.

3. Placement services is the selection of, and placement with, the most appropriate resource for children in out-of-home care based on the assessment of the child's unique needs and personality and the out-of-home care provider's capacity and skills in meeting those needs.

A. The contractor's case manager must utilize the least restrictive out-of-home placement for a child.

(I) The best interests of the child in care shall govern all placement decisions. When the placement would not be contrary to the best interest of the child, the contractor must give relatives of the child in care preference and first consideration to serve as the child's out-of-home care provider. As required by applicable federal and state law, the contractor must conduct an immediate search to locate, contact, and, where appropriate, place the child in care with his/her grandparent(s). Therefore, grandparents of the child in care shall be given first consideration for placement before other relatives of the child in care are considered. Whenever the contractor decides that relative placement is contrary to the best interests of the child, the contractor shall document the reasons for this decision in the case plan.

(II) Placements in residential treatment shall be based on an assessment of the child's needs. Such placements shall be considered for children in care who need structured and therapeutic intervention. Placement in a residential treatment facility must be of a limited duration and treatment during this time must be focused on enabling the child in care to transition to family and/or community-based care as soon as possible.

(III) In coordination with the child in care's Family Support Team, the contractor shall periodically reassess the placement of the child to determine whether the placement is consistent with the child's permanency plan and is meeting the child's needs.

(IV) As required by the written policies of the Children's Division, the contractor shall convene Family Support Team meetings to discuss any change in placement.

B. The contractor shall exercise reasonable and continuing efforts to preserve, foster, and encourage the relationships between siblings of children under case management with the contractor unless it is contrary to the safety or welfare of one (1) or more of the siblings to do so.

(I) Whenever reasonably possible, the contractor shall place a child in out-of-home care with any siblings who are also removed from their home. The contractor shall make reasonable efforts to place siblings in the same placement unless doing so would be contrary to the safety or welfare of any of the siblings.

(II) The contractor must make arrangements for regular, frequent, and continuing visitation between siblings who are not in the same placement unless it is contrary to the safety or welfare of one (1) or more of the siblings to do so.

(III) Unless it is contrary to the safety or welfare of one (1) or more of the siblings to do so, the contractor shall reunite siblings at the earliest time possible when circumstances change and different caregivers are no longer required.

(IV) The contractor shall document in the case file its efforts to place siblings in the same home and, if not placed in the same home, its efforts to maintain the sibling relationship. If the contractor determines that placement of siblings in the same placement or visitation between the siblings is contrary to the safety or welfare of the siblings, the contractor shall document the reasons therefore in the case file.

C. When an appropriate placement is available and it is in the best interests of the child to do so, placements of children in care shall be made in the child's home community.

D. Unless otherwise ordered or authorized by the court, placement of children in care shall be with a licensed out-of-home care provider.

E. The contractor's case manager shall not place a child in a home in which any person residing in the home has been found guilty of, or pled guilty to, any crimes identified in section 210.117, RSMo.

4. Service planning is the provision of any services indicated and identified as needed through an assessment and case plan, or ordered by the juvenile court.

5. Permanency planning is determining the permanent plan which best meets the needs of the child in care and which complies with the applicable requirements of federal law. Contractors shall provide ninety (90) calendar days of services to the child and family after a child is reunified with their parent(s) to assure a continued successful outcome as defined in the contract. Contractors shall provide ninety (90) calendar days of services to the child and family after a child is reunified with their legal guardian(s), from whom they were removed, to assure a continued successful outcome as defined in the contract. The permanency plan shall consider—

A. The child's need for a continuing relationship with his/her parent(s) or legal guardian(s) prior to the child's removal from the home;

B. The ability and willingness of the child's parent(s) or legal guardian(s) prior to the child's removal from the home to actively perform their functions as the child's caregiver with regards to the needs of the child;

C. The interaction and interrelationship of a child with the child's parent(s) or legal guardian(s) from whom they were removed,

the child's out-of-home care provider, siblings, and any other person who may have a significant impact upon the child's best interest;

D. The child's adjustment to his/her out-of-home placement, school, and community; and

E. The mental and physical health of all individuals involved, including any history of abuse of or by any individuals involved.

6. A permanency plan shall include an individualized primary permanency plan and a concurrent permanency plan for each child. Concurrent permanency planning is a process of pursuing a primary permanency goal for a child in care, such as reunification, while simultaneously establishing and implementing an alternative permanency plan for that child. The contractor shall make active, reasonable efforts to finalize the primary or concurrent permanency plan and shall document those efforts in the case file. The permanency plan shall be developed at the earliest possible opportunity and in no case later than fourteen (14) days after case referral. The plan shall be submitted to the court in the manner prescribed by law or as otherwise ordered by the court. As required by Children's Division written policies, the permanency plan shall be periodically reviewed and, where appropriate, may be modified if modification is in the best interests of the child as determined by the child's Family Support Team or as ordered by the court.

(B) Community resource development is the recruitment, assessment, training, maintenance, and retention of out-of-home care providers. It shall also include the development of those services which shall best meet the needs of the child and family.

1. The contractor shall conduct community resource development activities to obtain appropriate out-of-home resource providers to enable the contractor to perform its duties under the contract.

2. Unless such policies conflict with applicable state law, the contractor shall ensure background investigations are conducted on all out-of-home care providers as required by the written policies of the Children's Division.

3. The contractor shall utilize a training curriculum which meets or exceeds the resource development standards set forth in the written policies of the Children's Division. The contractor shall obtain approval from the Children's Division designee prior to finalizing the curriculum and content for the training sessions.

(C) The contractor may directly provide or contract for the services required by this rule in accordance with the proposal submitted in response to the Request for Proposal or Invitation for Bid for the contract awarded for such services. However, any subcontractors employed by the contractor must comply with all requirements of this regulation.

(6) The contractors shall deliver all services through professionals who have substantial and relevant training.

(A) The contractor's personnel providing case management services or direct supervision of case management services must successfully complete training which emphasizes—

1. A strengths-based assessment of the family;

2. Engagement of the family throughout a child's out-of-home placement beginning with the assessment;

3. Treatment and service planning for all family members with a commitment to reunifying the child with his/her biological family whenever possible, to preserving a child's connection to his/her family of origin whenever possible, and a commitment to a child's right to belong to a family;

4. Family dynamics, including human growth and development;

5. A team approach to case planning which draws upon the experience of professionals who are familiar to the members of the child in care's family;

6. Advocacy for the families and children served through the child welfare system;

7. The relevant legal and due process rights of children, parents, families, and care providers;

8. A background in the laws and procedures governing the juvenile courts; and

9. Cultural sensitivity.

(B) The contractor's personnel providing case management and direct supervision of case management staff must successfully complete pre-service training either by attending the Children's Division pre-service training, or by directly providing or arranging for another entity to provide pre-service training. The training shall include all of the topics listed in subsection (6)(A) above.

1. When the contractor plans to provide or arrange for another entity to provide pre-service training for its employees, the contractor must submit the curriculum to the Children's Division for prior approval.

A. When the contractor is granted permission to provide the pre-service training, or to arrange for another entity to provide the pre-service training, it shall be the contractor's responsibility to ensure the training is provided. In such instances, employees and/or subcontractors of the contractor will be eligible to attend the pre-service training provided by the Children's Division only if agreed between the Children's Division and the contractor.

2. The pre-service training for newly-hired case managers and direct supervisors must be completed within the first ninety (90) calendar days of employment.

3. Pre-service training must incorporate skill-based instruction and skill building exercises. For the first ninety (90) days of employment, the contractor must provide case managers with on-the-job support which includes experiential learning techniques.

4. Contractor's personnel attending Children's Division pre-service training will be scheduled for the first available session with openings.

5. The pre-service training must—

A. Clearly identify the case management role;

B. Clearly acquaint personnel with federal and state laws relating to child welfare practices; this includes, but is not limited to, the constitutional rights of families and children who are involved in the juvenile justice system, including training on due process, the Fourth Amendment to the U.S. Constitution, the Adoption and Safe Families Act, the requirement that Children's Division exercise reasonable efforts to finalize permanency plans, concurrent planning, termination of parental rights, guardianships, the Missouri Rules of Procedure for Juvenile Courts, and federal and state law governing permanency planning;

C. Acquaint personnel with Children's Division's policies relating to out-of-home care, adoption and guardianship subsidy programs, family-centered services, intensive in-home services, and resource development as defined by Children's Division written policies;

D. Acquaint personnel with record-keeping requirements as set forth in the written policies of the Children's Division;

E. Acquaint personnel with the automated information system utilized by the Children's Division; and

F. Successful completion of pre-service training must be documented in personnel records for all personnel providing case management services and direct supervisors.

(C) The contractor's personnel who recruit, train, and assess foster parents serving children with elevated needs, or who provide ongoing support to such foster parents, must successfully complete specific training which is designed for the elevated needs program. Elevated needs shall be defined as provided in 13 CSR 35-60.070. Training for elevated needs providers must be provided by the Children's Division or by the contractor's staff utilizing curriculum which has been previously approved by the Children's Division.

(D) The contractor's personnel who train staff who are tasked to recruit, train, and assess foster parents serving children with elevated needs must successfully complete a Train-the-Trainer session provided by the Children's Division or by another entity approved to provide such training by the Children's Division.

(11) The contract may not result in the loss of federal funding. The contractor shall therefore comply with and implement the requirements of all relevant federal and state laws and policies including, but

not limited to, those listed below which pertain to the child under case management by the contractor. In the event of a discrepancy between the policies of the Children's Division and federal or state law, the contractor shall comply with the federal or state law—

(A) Missouri rules and regulations governing child placing agencies;

(B) Missouri laws pertaining to the services described in the contract;

(C) The rules of procedure for the juvenile courts;

(D) Any court order pertaining to an assigned case;

(E) Interstate Compact on the Placement of Children/Juveniles;

(F) The Indian Child Welfare Act;

(G) Multi-Ethnic Placement Act of 1994;

(H) Children's Division written policies pertaining to the services described in the contract;

(I) Children's Division policy directives to provide services through best child welfare practices;

(J) Children's Division Federal Program Improvement Plan;

(K) Federal laws, rules, and regulations including, but not limited to, the Adoption and Safe Families Act and the Health Insurance Portability and Accountability Act;

(L) All federal and state laws and all policies and resolutions of the Missouri Department of Social Services regarding disclosure of confidential information and statements to the public and news media about any case assigned under the terms of the contract.

1. The contractor's policies and procedures shall be open to the public upon request.

2. The contractor is not prohibited from making public statements about the contractor, general policies and procedures of the contractor, and other issues of public importance not otherwise prohibited by law, regulation, or policy; and

(M) Local initiatives pertaining to services which a case manager provides to children in out-of-home placements and their families which have been approved by the Children's Division state office. This shall include, but shall not be limited to, requirements related to Family-to-Family. Expectations of contractors shall not exceed requirements of Children's Division staff.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 35—Children's Division
Chapter 32—Child Care

ORDER OF RULEMAKING

By the authority vested in the Children's Division under section 207.020, RSMo 2000, section 210.112, RSMo Supp. 2010, and *Young v. Children's Division, State of Missouri Department of Social Services*, 284 S.W.3d 553 (Mo. 2009), the director adopts a rule as follows:

13 CSR 35-32.030 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on April 1, 2011 (36 MoReg 994–996). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Department of Social Services, Children's Division received thirty-one (31) comments on the proposed rule.

COMMENT #1: A comment was received from Cornerstones of Care which requested the Children's Division to withdraw the published rule as well as the proposed 13 CSR 35-32.020 and re-engage providers in drafting rules that best meet the current and future needs for serving our child welfare population. A similar comment was received from Children's Permanency Partnership which requested the withdrawal of the above-referenced proposed rules. Another comment was received from Missouri Alliance for Children and Families recommending that the Children's Division withdraw both proposed rules.

RESPONSE: The Children's Division is legally required to promulgate regulations governing the contracted case management contracts and is therefore unable to withdraw the regulations. Section 210.112, RSMo, expressly requires the Children's Division to promulgate regulations governing the foster care case management contracts. In addition, the Children's Division is also required to promulgate regulations to administer these contracts pursuant to its rulemaking authority under section 207.020.1, RSMo, and the mandates of the Missouri Supreme Court in *Young v. Children's Div., State Dept. of Social Services*, 284 S.W.3d 553 (Mo. 2009); *Department of Social Services v. Little Hills Healthcare, L.L.C.,* 236 S.W.3d 637 (Mo. banc 2007); and other applicable law. Finally, the Children's Division is promulgating regulations pursuant to a specific request from the Missouri Coalition of Children's Agencies (MCCA) to do so. In a letter dated November 9, 2009, MCCA's president filed a petition pursuant to section 536.041, RSMo, with the Children's Division requesting that the Children's Division promulgate comprehensive regulations governing these contracts. The Children's Division agreed to promulgate regulations pursuant to the request. See also response to comment #2 below. No change has been made as a result of these comments.

COMMENT #2: Another comment was received from Cornerstones of Care which stated that neither the proposed rule or the proposed 13 CSR 35-32.020 meet the intent of HB 1453. A similar comment was received from Missouri Coalition of Children's Agencies which stated the rules are not consistent with the intent of HB 1453 which called for contracts for foster care and case management services in designated regions of the state to achieve specific results for children and families served and payment linked to performance. A comment was received from Alternative Opportunities which stated the rules far exceed the scope of implementation planning. A similar comment was received from Missouri Coalition of Children's Agencies which stated the rules go beyond the scope of implementation plans and dates.

RESPONSE: The Children's Division disagrees that the proposed regulations do not meet the intent of HB 1453 (2004). The Children's Division agrees that the proposed rules cover more than contract "implementation planning." The regulations that the Children's Division is promulgating are fully consistent with the intent of HB 1453 and are more comprehensive than "implementation planning" for the reasons which are summarized below.

First: Section 210.112, RSMo, requires the Children's Division to promulgate comprehensive regulations governing foster care case management contracts. The legislature enacted section 210.112, RSMo, into law in HB 1453 (2004). Section 210.112.4(6), RSMo, and HB 1453 expressly require the Children's Division to promulgate regulations so that "[p]ayment to the children's services providers and agencies shall be made based on the reasonable costs of services, including responsibilities necessary to execute the contract." In addition, section 210.112.8., RSMo, and HB 1453 expressly require that "the children's division shall promulgate and have in effect rules to implement the provisions of this section and, pursuant to this section, shall define implementation plans and dates." The plain language of the statute does not limit the Children's Division's mandate to promulgate regulations to "implementation planning." Instead, the statute expressly requires the Children's Division to promulgate regulations to "implement the provisions of this section." Section 210.112, RSMo, is broadly drafted to require the Children's Division to develop and implement a foster care and child protection/welfare system that is focused on providing the highest quality of services and outcomes for children and families and is expressly subject to the following principles:

• The safety and welfare of children is paramount;

• Providers of direct services to children and their families will be evaluated in a uniform and consistent basis;

• Services to children and their families shall be provided in a timely manner to maximize the opportunity for successful outcomes; and

• Any provider of direct services to children and families shall have the appropriate and relevant training, education, and expertise to provide the highest quality of services possible which shall be consistent with the federal standards, but not less than the standards and policies used by the Children's Division as of January 1, 2004.

Other provisions of section 210.112, RSMo, reference: a competitive procurement process; adherence to laws and regulations; the services which are to be provided, including case planning, permanency planning, and assessments for children under the age of ten (10); location where the services are to be provided; performance evaluation; and payment and incentives. HB 1453 clearly and expressly requires the Children's Division to promulgate broad, comprehensive regulations which are not limited to setting "implementation plans and dates."

Second: Even in the absence of the specific requirements in section 210.112, RSMo, that the Children's Division promulgate comprehensive regulations governing the foster care case management contracts, the Children's Division has a statutory mandate to promulgate comprehensive regulations governing contracts for foster care case management which are not limited to "implementation planning." The Children's Division has the statutory authority to adopt rules and regulations which are necessary or desirable to carry out the duties assigned to the Children's Division by law. See sections 207.020.1(5), (8)–(17) and 660.017, RSMo. Recently, the Missouri Supreme Court has held that the Children's Division is required to adopt policies by promulgating formal regulations in situations where the Children's Division's policies are generally applicable to the public, individuals, or entities impacted by the policies in question. *Young v. Children's Div., State Dept. of Social Services*, 284 S.W.3d 553 (Mo. 2009). In order to comply with its statutory mandate and to carry out the duties assigned to the Children's Division by law, the Children's Division has determined that it is necessary and desirable to promulgate comprehensive regulations which go beyond the scope of "implementation planning."

Third: The contracted case manager provider community specifically asked the Children's Division to promulgate a comprehensive set of regulations governing the administration and content of the foster care case management contracts. MCCA sent a letter to the Children's Division on November 4, 2009, formally requesting that the Children's Division promulgate regulations pursuant to sections 210.112 and 536.041, RSMo. The MCCA represents a broad group of private agencies and providers of foster care case management services through contracts with the Children's Division. In the letter requesting the rule, MCCA correctly pointed out that section 210.112, RSMo, requires the Children's Division to promulgate regulations. MCCA pointed out that the Children's Division cannot accomplish by contract what is required to be accomplished through the promulgation of a rule, citing *NME Hospitals, Inc. v. Dept. of Social Services*, 850 S.W.2d 71 (Mo. 1993). In its letter MCCA argued that the Children's Division had a legal "obligation," at a minimum, to promulgate regulations governing:

• The assessment for "children under ten years old to allow for the least restrictive placement for the child";

• Defining "the flexibility that will take into account children and families on a case-by-case basis";

• The definition of "outcome measures for private and public agencies that 'shall be equal for each program'";

• "Details on the state's expectations for the child's case management plan";

• "Define how the contract shall provide incentives in addition to the costs of services when providers accomplish the goal/outcomes of their contracts; and

• "The payment structure of the children's services providers and agencies that is based on reasonable costs of services."

MCCA also urged the Children's Division "to go further than the legally required elements of the rule to" address contract structure, provide a comprehensive rule on children's services contracts, and to describe the mechanism to allow providers to exit the contract if there is a material change in the contract. The Children's Division agreed to MCCA's request to promulgate regulations and formally notified the Joint Committee on Administrative Rules (JCAR) as required by section 536.041, RSMo, that it intended to promulgate regulations as requested. No change has been made as a result of these comments.

COMMENT #3: Another comment was received from Missouri Coalition of Children's Agencies which questioned if the Department of Social Services had the authority to promulgate the proposed rule or 13 CSR 35-32.020 since the deadline in the statute was missed by six (6) years.

RESPONSE: The Department of Social Services has the statutory authority to promulgate the proposed rule as well as 13 CSR 35-32.020 for all of the reasons set forth in the Children's Division's response to comment #2. No change has been made as a result of these comments.

COMMENT #4: Another comment was received from Alternative Opportunities which stated the proposed rule, as well as the proposed 13 CSR 35-32.020, creates a barrier to the dynamic aspects of the current collaborative responsiveness to the changing aspects of child welfare and foster care case management. Similar comments were received from MCCA which stated the rules would undermine the good public-private working relationships that have evolved, prevent mid-course corrections by the Children's Division or foster care case management agencies, and undermine the current practice of working collaboratively to identify and remedy barriers that stand in the way of better results for children and families. Another comment received from MCCA stated the rules do not allow the Children's Division or foster care case management agencies to reassess and change their approach over time based on data and lessons learned. A similar comment was received from Missouri Alliance for Children and Families which stated additional public and private resources will be required to alter the rules in order to implement needed change. As such, the rules will serve as a detriment to public and private collaboration to improve practice.

RESPONSE: The Children's Division respectfully disagrees with these comments.

The Children's Division is committed to continuing its long standing practice to work closely with our partners and stakeholders in all sectors of the juvenile justice and child welfare system. A collaborative process has been in place since 2004, when the public and private sectors worked together to develop portions of the contract. The Children's Division has worked with private industry since 2004 to develop a public/private child welfare services delivery system in which the paramount consideration is the best interests, safety, and welfare of the children and families served by this system. This regulation has been drafted based on the Children's Division's experience in providing child welfare service and many years of experience administering contracts with private agencies for the provision of these services.

The Department of Social Services is promulgating this regulation at the express request of the private sector. In a letter to the Department of Social Services dated November 4, 2009, MCCA petitioned the Department of Social Services to promulgate comprehensive regulations pursuant to sections 210.112 and 536.041, RSMo. The Department of Social Services has agreed with MCCA that it was required to promulgate regulations and is committed to promulgating regulations. See the response to comment #2.

The Children's Division also disagrees that the regulations do not allow the Children's Division or foster care case management agencies to reassess and change their approach over time based on data

and lessons learned. The regulations are largely based on the provisions of the contracts which have been in place for several years. The regulations set out a minimum baseline of performance expectations which are grounded in specific provisions of federal and/or state law, accreditation standards, Children's Division experience, and industry best practices. The Children's Division has consulted with the private sector in developing these regulations and is committed to consulting with the private sector as the Children's Division proceeds to implement these regulations. The Children's Division, for example, met with the chief executive officers of the contracted agencies on February 19, 2010, to fully discuss a change in case assignment methodology, whereby the annual rebuild of caseloads would be eliminated and a change in the incentive payment which would be necessary as the result. The one-for-one case replacement eliminates case management disruption for many children and families each year which was necessary when the contractor's caseload had to be rebuilt with older cases at the end of each contract year. The Children's Division has received complaints from foster parents, juvenile officers, Court Appointed Special Advocates (CASA) volunteers, and legislators regarding the current, annual rebuild process. Under the current case assignment methodology incentives automatically occur if the contractor is meeting or exceeding the permanency expectation as they can serve less children than what they are paid for. Under the one-for-one methodology, the caseload remains constant whereby an incentive payment has to be made. Draft rules related to cost were shared with the private industry in April 2010. A comment period was provided. The Children's Division considered all comments received regarding the draft rules. Some revisions to the rules were made in response to the comments received. The Children's Division also met with the chief executive officers of contracted agencies on June 10, 2011, to discuss the comments to the regulations. The rules contain provisions which the Children's Division does not expect to change over time. The Children's Division expects to continue a collaborative public/private partnership to address the changing needs of the child welfare population. No change has been made as a result of these comments.

COMMENT #5: Another comment was received from MCCA which stated that neither the proposed rule or 13 CSR 35-32.020 strengthen the public/private partnership or allow for "shared accountability" and mutual problem-solving. Much of what is in the proposed rule is more appropriately addressed in procurement, contract negotiation, management of the contract, and through ongoing dialogue between the Children's Division and private agencies.

RESPONSE: The Children's Division respectfully disagrees with this comment for the reasons set out in the Children's Division's responses to comments #2, #3, and #4. The comment does not specify how the regulations do not strengthen the public/private partnership, allow for shared accountability, or allow for mutual problem-solving. The Children's Division is committed to continuing its long standing practice to work closely with partners and stakeholders in all sectors of the juvenile justice and child welfare system, including the private sector. A collaborative process has been in place since 2004, when the public and private sectors worked together to develop portions of the contract. The Children's Division has worked with private industry since 2004 to develop a public/private child welfare services delivery system in which the paramount consideration is the best interests, safety, and welfare of the children and families served by this system. The rules contain provisions which the Children's Division does not expect to change over time. The Children's Division expects to continue a collaborative public/private partnership to address the changing needs of the child welfare population. No change has been made as a result of these comments.

COMMENT #6: Another comment was received from Alternative Opportunities which stated that the rule, as well as 13 CSR 35-32.020, removes or denies access to flexibility and fiscal management. A similar comment was received from Cornerstones of Care which stated the rules do not allow for flexibility to respond to the needs of an ever-changing child welfare population and do not allow for innovation desired through performance-based contracting initiatives. Another comment was received from Missouri Coalition of Children's Agencies which stated the rules dictate how the contractors must operate which limits their ability to innovate and manage the inherent risks under the contract. In the performance-based approach, an agency says the problem needs to be solved and allows contractors to make bids detailing their proposed solutions (Office of Federal Procurement Policy 2007).

RESPONSE: The comments do not specifically state how the proposed regulations do not allow for flexibility and innovation or otherwise reduce the contractor's ability to manage inherent risks under the contract. The comment does not specify which "risks" are involved and why these risks cannot be managed. This lack of specificity means that it is difficult for the Children's Division to specifically respond to this comment. To the extent that the Children's Division is able to understand the comment, the Children's Division respectfully disagrees with these comments for the reasons set out in the Children's Division's responses to comments #2, #3, #4, and #5. Sections 207.020.1. and 210.112, RSMo, and the principles announced by the Missouri Supreme Court in recent case law require the Department of Social Services to promulgate comprehensive regulations governing foster care case management contracts. The Children's Division must be guided by the specific mandates of section 210.112, RSMo, which legally require that the Children's Division establish a regulatory baseline to assure that, among other things: the safety and best interests of children and families are the paramount consideration; that providers of direct services to children and their families will be evaluated in a uniform and consistent basis; services to children and their families shall be provided in a timely manner to maximize the opportunity for successful outcomes; and any provider of direct services to children and families shall have the appropriate and relevant training, education, and expertise to provide the highest quality of services possible which shall be consistent with the federal standards, but not less than the standards and policies used by the Children's Division as of January 1, 2004. This means that the Department of Social Services is required to implement regulations which provide for, among other things: uniform and consistent criteria for the evaluation of provider programs; setting standards for the provision of services to maximize successful outcomes; and setting baseline standards to make certain that providers have appropriate training, education, and experience. No change has been made as a result of these comments.

COMMENT #7: Another comment was received from Cornerstones of Care which stated that the proposed rule, as well as 13 CSR 35-32.020, is too prescriptive and outlines specific procedural requirements which are best suited for contracts or policy rather than laying out a framework for guiding procurement activities. A similar comment was received from Missouri Coalition of Children's Agencies (MCCA) which requested the rules be withdrawn and refocused on the intent of implementing the provisions of statute which is the procurement process, not the day-to-day practice.

RESPONSE: The Children's Division respectfully disagrees with these comments for the reasons set out in comments #1 through #6, inclusive. No change has been made as a result of these comments.

COMMENT #8: A comment was received from Missouri Coalition of Children's Agencies which stated that the proposed rule, as well as 13 CSR 35-32.020, does not describe a procurement method that serves as the basis for a contract to provide the service. A similar comment was also received from Missouri Alliance for Children and Families which advocated for the public and private sectors to work together to develop rules that guide contract procurement, without constraining practice and procedural flexibility.

RESPONSE: The Children's Division respectfully disagrees with this comment. Section 210.112.2., RSMo, expressly requires that

"contracts shall be awarded through a competitive process." The regulations that the Children's Division have promulgated require that contracts be awarded through a competitive bidding process. The regulation contains specific requirements for what is to be included in each contract. Finally, the state of Missouri has clearly defined statutes and regulations governing the process of procurement of state contracts. These statutes and regulations are set forth in detail in Chapter 34, RSMo, and the regulations of the Office of Administration. The Children's Division does not believe that it is necessary, proper, or appropriate to promulgate additional regulations governing procurement which will duplicate statues and regulations which are already in place. No change has been made as a result of these comments.

COMMENT #9: Another comment was received from Cornerstones of Care which stated that the proposed rule, as well as 13 CSR 35-32.020, does not account for the critical elements of foster home maintenance and retention activities. A similar comment was received from Missouri Alliance for Children and Families which stated that the rules do not acknowledge the ongoing service contractors provide to support and retain foster and adoptive families. As agencies have successfully developed a large number of foster and adoptive homes, the cost of retaining these homes continues to increase. The rules do not consider these costs.

RESPONSE AND EXPLANATION OF CHANGE: The Children's Division agrees with these comments and has made revisions to the regulations. The definition of resource development activities found at 13 CSR 35-32.020(3)(B) has been revised. The rule related to cost found at paragraph (2)(A)2. was also revised.

COMMENT #10: Another comment was received from Missouri Alliance for Children and Families which stated that the proposed rule, as well as 13 CSR 35-32.020, applies to all case management services contracted for youth placed in custody.

RESPONSE AND EXPLANATION OF CHANGE: The division agrees with this comment. Both 13 CSR 35-32.020 and 13 CSR 35-32.030 have been amended throughout their text to clarify that the rules only apply to the foster care case management contracts.

COMMENT #11: A comment was received from Jackson County CASA which stated that any agency receiving direct state funding to provide child welfare services (lead contractors) have in place a non-discrimination statement which includes prohibiting discrimination based on sexual orientation, gender identity, or expression.

RESPONSE: Department of Social Services contracts will continue to include all applicable state and federal non-discrimination requirements. Therefore, no change to the rule is necessary in light of this comment.

COMMENT #12: Another comment was received from Missouri Alliance for Children and Families which stated the courts generally terminate jurisdiction of the child immediately upon granting guardianship. In these situations, the family is no longer required to work with the case management agency ninety (90) days post-guardianship as is required by the proposed rule and the proposed 13 CSR 35-32.020.

RESPONSE AND EXPLANATION OF CHANGE: The Children's Division believes that the regulation, as drafted, does not require continued services of the contractor after a guardianship has been finalized. 13 CSR 35-32.020 requires ninety (90) days of services after a reunification has occurred, when a child has been returned to his/her parent or guardian. However, to make certain that the language of the regulation is clear, the Children's Division is amending 13 CSR 35-32.020(3)(A)5. The rule related to cost, paragraph (6)(B)2., was also amended. Additionally, subparagraph (6)(B)2.E. has been amended.

COMMENT #13: Another comment was received from Missouri Alliance for Children and Families which questioned the process which will be used to determine the "sufficient" number of appropriate resources. The Children's Division requested clarification. Missouri Alliance responded with the following: "The draft rule says that the contractor shall develop services which shall best meet the needs of the child and his/her family when they are not readily available in the local community. Since we serve hundreds of families in each community, the number of 'services' that any given family may need could vary and could be very expensive to develop. This could be drug and alcohol programs, job programs, parent education classes—just to name a few. Where does the contractor's responsibility end? The cost of developing the large array of services that families may need could go well beyond the scope of the contract and could be very expensive."

RESPONSE AND EXPLANATION OF CHANGE: The Children's Division agrees with this comment. 13 CSR 35-32.020(3)(B) was revised. 13 CSR 35-32.020(3)(B)1. was also amended. Finally, paragraph (2)(A)2. was amended as well.

COMMENT #14: A comment was received from Missouri Alliance for Children and Families which stated that exceptional work to ensure that older youth receive comprehensive education in independent living skills and maintenance of youth in care until twenty-one (21) years of age should be recognized. The Children's Division requested clarification. Missouri Alliance responded, "this comment is referring to a belief that contracted agencies should be held accountable and recognized for work done with youth who have a goal of Another Planned Permanent Living Arrangement (APPLA). These cases do not count as permanencies, but many believe that the contract should recognize when agencies are working hard to keep these youth in care until age twenty-one (21) and getting them in school or trade programs, helping them with jobs, looking for family members to connect to, etc."

RESPONSE: The rule and current contracts allow outcomes to be developed related to APPLA cases. Missouri Alliance has informed the Children's Division that it agreed that it was not necessary to include specific outcomes for children with a goal of APPLA in the rule. No change has been made as a result of this comment.

COMMENT #15: Another comment was received from Cornerstones of Care which stated that the rule should outline an appeal process for providers to work with the Children's Division in rectifying rate errors or catastrophic cases which are outside the normal population of children services and could cause a provider to experience financial ramifications which could compromise the quality of service provided.

RESPONSE AND EXPLANATION OF CHANGE: The regulation will require that the contracts be awarded through a competitive bidding process. It is therefore up to the contractors to develop a competitive, reasonable price structure based on their assessments of their reasonable costs. If their bid is accepted, contractors will be paid the amount they bid for the number of cases awarded each month. The Children's Division recognizes that there may be some unusual, extraordinary cases in which the contractor's costs in a particular case may be so unexpectedly high as to jeopardize the contractor's ability to provide services for the child or other children being served under the contract. The current contract allows for financial assistance of a catastrophic case when service costs exceed one hundred thousand dollars ($100,000) during the contract year. Subparagraph (6)(A)3.E. has been amended.

COMMENT #16: Another comment was received from Children's Permanency Partnership which stated that the rules call into law a method for case assignment that has not been tested in the state of Missouri. In the event the untested method proves to be inappropriate or unmanageable for the state and/or contractors, there is no recourse for alteration of the process. A similar comment was

received from Missouri Coalition of Children's Agencies which stated that the rule locks in decisions about payments, caseloads, and incentives when neither side fully understands the risks in the model. Another comment was received from Missouri Alliance for Children and Families which stated that the one-for-one case replacement methodology has never been applied and may have unintended consequences. The rule prohibits the implementation of this methodology under a trial period. It is highly likely that the methodology will need to be adjusted over time.

RESPONSE AND EXPLANATION OF CHANGE: The rule was drafted in response to a request for such received from MCCA in a letter dated November 4, 2009. See the Children's Division's response to comment #2. Section 210.112.8., RSMo, specifically requires the Children's Division to promulgate and have in effect rules to implement provisions of section 210.112, RSMo, which includes payment and incentives. The case assignment process is tied to the incentives under the current contract. The Children's Division consulted with the private industry regarding a change in case assignment methodology whereby the annual rebuild of caseloads would be eliminated. The annual rebuild of caseloads in the current contracts frequently requires that the Children's Division reassign case management responsibilities between providers on an annual basis. This means that foster children and foster parents experience a change in case managers which may result in delays in the implementation of their service plans. Section 210.112, RSMo, expressly provides that the safety and welfare of the children must be the Children's Division's paramount consideration. The one-for-one case replacement methodology eliminates case disruption for many children and families each year which was necessary when the contractor's caseload had to be rebuilt at the end of each contract year. The Children's Division recognizes that the one-for-one case assignment methodology has not been tested. Therefore, subsection (6)(B) was amended. Additionally, paragraph (6)(B)2. was also amended.

COMMENT #17: Another comment was received from Missouri Alliance for Children and Families which stated that the rule describes a new methodology for rewarding incentives for performance. The new incentive process has never been tested.

RESPONSE AND EXPLANATION OF CHANGE: See the Children's Division's response to comment #17. The rule was drafted in response to a request for such received from MCCA in a letter dated November 4, 2009. The Children's Division consulted with the private industry regarding a change in case assignment methodology whereby the annual rebuild of caseloads would be eliminated. The one-for-one replacement methodology eliminates case disruption for many children and families each year which was necessary when the contractor's caseload had to be rebuilt at the end of each contract year. The Children's Division has received complaints regarding the annual rebuild process from foster parents, juvenile officers, CASA volunteers, and legislators regarding the annual rebuild process. The revised case replacement methodology impacts the manner in which the incentive is paid. Under the current methodology, incentives automatically occur if the contractor meets or exceeds the permanency expectation. Under the one-for-one methodology, the caseload remains constant whereby an incentive payment has to be made. The Children's Division recognizes that the one-for-one case assignment methodology and corresponding revision to the incentive process has not been tested. Therefore, subsection (6)(B) was amended. Additionally, paragraph (6)(B)2. was also amended.

COMMENT #18: Another comment was received from Children's Permanency Partnership which stated that the rule allowed two percent (2%) uncompensated case management assignments which could be damaging to the fiscal operations of contractors. Another comment was received from Missouri Alliance for Children and Families which stated that the rules allow the Children's Division to increase a contracted agency caseload by two percent (2%) to accommodate for sibling groups without additional payment.

RESPONSE AND EXPLANATION OF CHANGE: Siblings are assigned to one (1) case management provider and therefore temporary overages can occur, but these overages are adjusted month-by-month under the current contracts and would be adjusted case-by-case under the one-for-one case assignment methodology employed in the rule. For example, if a case is closed involving one (1) child and a sibling group of three (3) are the next to enter the care and custody of Children's Division, the next two (2) cases which are closed by the contractor would not be replaced to compensate for the overage. Children's Division previously consulted with the private industry which requested a threshold which could not be exceeded when assigning sibling groups. As such, the two percent (2%) language was included in the rule. Contractors would not be assigned more cases than they return during the contract year. Subparagraph (6)(B)2.E. was amended.

COMMENT #19: Another comment was received from Children's Permanency Partnership which stated that the contractors would continue to be financially penalized for the cost of re-entries into care. Another comment was received from Missouri Alliance for Children and Families which stated that the rule continues a financial penalty for children who re-enter care that is unfairly applied and unpredictable even when the contractor meets or exceeds the performance measure. It was noted that the current financial penalty is based on the number of children as opposed to the number of families that experience disruptions. The penalty is based on the contract year which could serve as an incentive to return a child home multiple times during one (1) contract year, the case management agency incurs the entire financial cost even though decisions regarding a child's permanency plan are approved by a large team of professionals, and there will be less of an incentive to prematurely move to finalize permanency under the one-for-one replacement methodology.

RESPONSE AND EXPLANATION OF CHANGE: Section 210.112.4(5), RSMo, states the delivery system shall "maximize permanency and successful outcome in the shortest time possible." Section 210.112.4(6), RSMo, requires incentives in recognition of accomplishment of the case goals. Currently, the contractor receives an immediate financial incentive to move children to permanency quickly. Under the one-for-one replacement methodology, there will still be an incentive tied to permanency if the contractor meets the performance expectation. The amount of the incentive will vary based on when the contractor met the permanency expectation during the contract year. The Children's Division recognizes that there is currently not a disincentive associated with multiple re-entries into care during the contract year when a child returns home. Under the one-for-one case replacement methodology, there will be a disincentive for all re-entries into care, except when the re-entry is beyond the contractor's control, after the allowable rate or number of re-entries into care has been exceeded. The current contract does not include a fiscal disincentive for children who re-enter care when the contractor did not have an opportunity to serve the child or when the court terminated jurisdiction and the contractor was against the release of court jurisdiction. The rule also includes this language. Subparagraph (6)(B)3.D. has been added to the rule to further minimize the fiscal impact of re-entries into care. Additionally, subparagraph (6)(B)2.E. has also been amended.

COMMENT #20: Another comment was received from Missouri Coalition of Children's Agencies which stated that the rule restates the payment model defined in the initial procurement and current contracts, but does not sufficiently define terms or processes that should be used going forward.

RESPONSE: The Children's Division respectfully disagrees with this comment. The rule specifically defines how the payment and referral process may change for contracts awarded on or after October 1, 2011. The Children's Division consulted with the private industry regarding a change in case assignment methodology whereby the annual rebuild

of caseloads would be eliminated. The one-for-one case replacement eliminates case management disruption for many children and families each year which was necessary when the contractor's caseload had to be rebuilt at the end of each contract year. This has resulted in the disruption in case management services to foster children, foster parents, and families. The Children's Division has received complaints regarding the annual rebuild process from foster parents, juvenile officers, CASA volunteers, and legislators. The paramount consideration of the contracted case management system is the best interests, welfare, and safety of the children in the system. The annual case rebuild does not meet the best interests of children and families in the foster system because it sometimes results in the reassignment of a child or family to a new case management provider without considering the individual needs of the particular child and family. The revised case replacement methodology, which may go into effect when the contract is next bid, impacts the manner in which the incentive is paid. Under the current methodology, incentives automatically occur if the contractor meets or exceeds the permanency expectation as the contractor is paid for the number of cases awarded regardless of the number he/she is actually serving. If the contractor is meeting or exceeding the permanency expectation, he/she will be paid for more cases than he/she is serving. Under the one-for-one case assignment methodology, the caseload remains constant whereby an incentive payment has to be made. The rule clarifies such. Children's Division policies and procedures will continue to define minimum practice standards. Innovation and wraparound services will continue to be encouraged. No change has been made as a result of this comment.

COMMENT #21: Another comment was received from Missouri Coalition of Children's Agencies which questioned how the Children's Division will define "reasonable costs" going forward. Another comment was received from Missouri Alliance for Children and Families which questioned why the Children's Division is able to reject a bid when it is an open bid. It was questioned what process would be utilized to determine what is and is not reasonable cost.
RESPONSE AND EXPLANATION OF CHANGE: The Department of Social Services will use Office of Management and Budget (OMB) Circular A-122 to define reasonable costs and subsection (1)(B) has been amended to reflect that change.

COMMENT #22: Another comment was received from Missouri Coalition of Children's Agencies which questioned how the Children's Division will ensure that the payment model and risks to contractors are aligned with their programmatic authority. The Children's Division requested clarification of this question. MCCA responded with the following: "RSMo 210.112.6 provides that payment to the children's services providers and agencies shall be made based on the reasonable costs of services, including responsibilities necessary to execute the contract. Contracts shall provide incentives in addition to the costs of services provided in recognition of accomplishment of the case goals and the corresponding cost savings to the state. The division shall promulgate rules to implement the provisions of this subdivision is what this section was referencing."
RESPONSE: As noted above, the Department of Social Services will use federal requirements to determine whether costs are reasonable as defined in OMB Circular A-122. The rule has been revised to reflect such as noted in response to comment #21. Incentives for exceeding the permanency expectation are defined in the rule. To the extent that the "risks" mentioned in the comment refer to financial risks of bidding on a specific price per case, the Children's Division refers to its response to comment #23 below.

COMMENT #23: Another comment was received from Missouri Coalition of Children's Agencies which questioned how Children's Division and Foster Care Case Management (FCCM) agencies will periodically reassess the sufficiency of the rates and the use of incentives and adapt the model based upon lessons learned.
RESPONSE AND EXPLANATION OF CHANGE: The contracts are competitively bid every three to five (3–5) years. The contractor is responsible for submitting a bid which shall cover all reasonable costs. If their bid is accepted, contractors are paid the amount they bid for the number of cases awarded each month. The competitive bid process is not designed to allow for a reassessment of the sufficiency of the rates. Section 210.112.8., RSMo, requires the Children's Division to promulgate and have in effect rules to implement the provisions of section 210.112 RSMo. Provisions in section 210.112, RSMo, address payment and incentives. The rules include language to address these provisions.

In the event that the Children's Division establishes a cap on the highest amount that it will pay for the reasonable cost of services identified in the Request for Proposal (RFP) or Invitation for Bids (IFB), the rule states that Children's Division shall utilize one (1) or more of the following to establish the cap: industry cost reports; cost to CD for similar services; historical expenditures of agencies contracted to provide the services in the RFP or IFB; historical expenditures of CD for all services identified in the RFP or IFB. When industry cost reports will be utilized to establish the cap, subsection (2)(A) has been revised.

COMMENT #24: Another comment was received from Missouri Alliance for Children and Families which stated that the contracts require providers to achieve measurable outcomes and other performance goals which can be impacted if the population referred to each provider is not equally representative of the children and families served by all. The new methodology for distributing cases stated in the rule may skew the population equality between provider agencies.
RESPONSE: The statute clearly and expressly requires that the Children's Division's paramount consideration in implementing the system for contracted case management is the safety and welfare of the children and families that the system serves. The current case assignment methodology has likely skewed populations served. In St. Louis City, the majority of the new entries into care have been assigned to the contracted providers to meet the predetermined monthly assignments which are to be made. The contractors are serving a disproportionate share of the newest cases. As a result, contracted caseloads may no longer be representative of the region's averages for age, race, sex, and length of time in care, which was the criteria on which the initial caseloads were distributed. The assignment of new entries into care provides for consistent case management which is in the best interest of children and families served. Conversely, if every case assignment is based on the need to maintain equality between case management providers, case management would need to be disrupted for many more children than the current process allows. The one-for-one case assignment methodology, which may be included in the next contract, gives priority to the assignment of new entries into care, then cases from vacated loads, and then children who entered care within thirty (30) days. This model should be less disruptive for children and families as most children exiting care who did not achieve permanency are replaced with older cases under the current model. In addition, older cases are assigned at the beginning of each contract year to "rebuild" the contractor's caseload. Under the one-for-one case assignment methodology, there is increased likelihood that more new entries into care will be assigned throughout the contract year which is in the best interest of children and families. Children who have been in care less than ninety (90) days have the greatest likelihood of timely reunification.

COMMENT #25: Another comment was received from Missouri Alliance for Children and Families which proposed the following definition for the term "service planning": "Service planning and implementation is the identification of and provision of any services indicated and identified as needed through an assessment and case plan, or ordered by the juvenile court."
RESPONSE: Subparagraph (2)(A)1.D. defines "service planning." No change has been made as a result of this comment.

COMMENT #26: Another comment was received from Missouri Alliance for Children and Families which stated that the rule stifles the development and utilization of innovative services in a community and assumes a full spectrum of needed services is currently available in many communities which is not the case.
RESPONSE: The division respectfully states that the comment is difficult to respond to because it does not state specifically how or why the proposed regulation "stifles" innovation. This comment was contained in paragraph (6)(B)3. where the rule defined methods which could be utilized to establish a cap on the amount Children's Division will pay when Children's Division decides to establish such a cap. Previous costs and expenditure data could be utilized through this process. There is no language included in the rule which would prohibit the development of community resources. The Children's Division will continue to encourage contractors to develop and utilize innovative, community services. No change has been made as a result of this comment.

COMMENT #27: Another comment was received from Missouri Alliance for Children and Families which stated that providers' ability to determine costs is dependent on the volume of cases that will be served. This impacts staffing size, office space, and other costs.
RESPONSE: The Children's Division recognizes that cost is dependent, in part, on the number of cases awarded. The Request for Proposals which have and will be released for contracted case management services have and will continue to be structured in a manner to allow contractors to submit different bids to correspond with a range of number of cases served. The bid which corresponds to the number of cases which are awarded is the rate which is also awarded. No change has been made as a result of this comment.

COMMENT #28: Another comment was received from Missouri Alliance for Children and Families which stated when new geographical areas are awarded, the Children's Division, contracted providers, and communities need time to hire staff, train, develop working protocols in the community, etc.
RESPONSE: The Children's Division has always recognized that contractors need sufficient lead time to become operational to prepare for service delivery when a new geographical area is awarded. Service regions are not defined in the rule as they could change over time. The service regions and service begin dates are included in the contract. The expansion to new regions during a contract year will continue to be contingent on mutual agreement of the Children's Division and the contractor as stated in the contract. No change has been made as a result of this comment.

COMMENT #29: Another comment was received from Missouri Alliance for Children and Families which stated the referral process described in one section of the rule is not compatible with the new methodology described in other sections.
RESPONSE: The rule defines the current referral process and the process which may go into effect when these contracts are next bid. Two (2) methods are described as it is likely the rules will be in place before the contract is rebid. No change has been made as a result of this comment.

COMMENT #30: Another comment was received from Missouri Alliance for Children and Families which stated the rule does not put any parameters around the Children's Division determining it is in the best interest of a child to be reassigned to the Children's Division for case management.
RESPONSE: The language in the rule is consistent with language which has been included in the contracts since they were implemented in 2005. The Children's Division remains legally responsible for all children assigned to the foster care case management contractors. The Children's Division therefore must retain the right to disenroll a child at its discretion when it is determined it is no longer in the best interest of a child to be served by the contractor. No change has been made as a result of this comment.

COMMENT #31: Another comment was received from Missouri Alliance for Children and Families which questioned if a contractor could work to exceed expectations and then be told at the end of the contract year that incentives will not be allocated due to a lack of available appropriation.
RESPONSE: The Children's Division is only authorized to expend funds which are allocated to it through the appropriation process set by the constitution and laws of the state of Missouri. The Children's Division will make every effort to manage its contracts and appropriations to make certain that it can meet its contractual obligations to pay incentives. However, the Children's Division cannot provide any contractor with absolute assurances that circumstances could not arise which would leave it with insufficient funds to pay incentives due to lack of an available appropriation. No change has been made as a result of this comment.

13 CSR 35-32.030 Contracted Foster Care Case Management Costs

PURPOSE: This rule establishes the methodology for the provision of reasonable cost for foster care case management contracted services as set forth in section 210.112.4.(6), RSMo.

(1) Payment to foster care case management providers contracted by the Children's Division (CD) shall be based on the reasonable cost of services as determined through the competitive procurement process. Providers shall certify their bid covers all reasonable costs.

(A) Upon request by CD, the provider shall submit a written explanation and supporting documentation detailing how the provider calculated the reasonable costs of services. The CD may not award a contract to any provider which fails to submit such information when requested by CD.

(B) CD, in its sole discretion, may reject any bid where CD determines that the bid amount for a service or services exceeds the reasonable cost of the service or services. CD shall use federal guidelines, Office of Management and Budget (OMB) Circular A-122, to define reasonable costs as follows:

1. Reasonable costs. A cost is reasonable if, in its nature or amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the costs. The question of the reasonableness of specific costs must be scrutinized with particular care in connection with organizations or separate divisions thereof which receive the preponderance of their support from awards made by federal agencies. In determining the reasonableness of a given cost, consideration shall be given to—

A. Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the organization or the performance of the award;

B. The restraints or requirements imposed by such factors as generally-accepted sound business practices, arms-length bargaining, federal and state laws and regulations, and terms and conditions of the award;

C. Whether the individuals concerned acted with prudence in the circumstances, considering their responsibilities to the organization, its members, employees, and clients, the public at large, and the federal government; and

D. Significant deviations from the established practices of the organization which may unjustifiably increase the award costs.

(2) CD may, in its sole discretion, establish a cap on the highest amount that CD will pay for the reasonable cost of services identified in the Request for Proposal (RFP) or Invitation for Bid (IFB). CD will announce the cap for services in the RFP or IFB. CD shall utilize one (1) or more of the following methods to establish the cap as part of the competitive procurement process:

(A) Industry cost reports for the previous three (3) calendar years which demonstrate the costs to the provider to deliver the services identified in the RFP or IFB. Such reports shall include costs for case management services, community resource development, treatment services, special expenses, crisis expenses, administrative costs, and any other cost incurred to provide the services identified in the RFP or IFB. Upon request by CD, case management providers or prospective case management providers who submit a proposal or bid for a contract shall provide CD with cost reports and supporting documentation. The format for submission of cost report information shall be included in the RFP or IFB.

1. Cost for case management services shall include all costs associated with assessments, case planning, placement services, service planning, permanency planning, and concurrent planning. Such costs shall include salaries and benefits for required staff.

A. Assessments shall be defined as the consideration of all social, psychological, medical, educational, and other factors to determine diagnostic data to be used as a basis for the case plan.

B. Case planning is a process of negotiation between the family case manager, parent(s) or guardian(s) from whom the child was removed, and the juvenile officer which describes the services and activities necessary for the purpose of achieving a permanent familial relationship for the child.

C. Placement services is the selection of the most appropriate placement resource for children in out-of-home care based on the assessment of the child's unique needs and personality and the out-of-home care provider's capacity and skills in meeting those needs.

D. Service planning is the provision of any services indicated and identified as needed through an assessment and case plan or ordered by the juvenile court.

E. Permanency planning is determining the permanent plan which best meets the needs of the child.

F. Concurrent planning is a process of pursuing a primary permanency goal for children in out-of-home care, such as reunification, while simultaneously establishing and implementing an alternative permanency plan for that child.

2. Cost for community resource development shall include all costs associated with the recruitment, assessment, training, and maintenance and retention of out-of-home care providers. It shall also include the development of those services which shall best meet the needs of the child and his/her family.

3. Cost for treatment services shall include all services designed to meet the service and treatment needs of an individual.

4. Cost for special expenses shall include all costs associated with needs of children which are not designed to meet a service or treatment need. These costs would not be included in the foster care maintenance payment to the placement provider. An example is a clothing allowance.

5. Cost for crisis expenses shall include all costs incurred to address the critical financial and resource needs of families. Crisis funds are utilized to purchase specific items family members need to alleviate a crisis. An example is payment to have utilities restored so that a child may be returned home.

6. Administrative costs are those which are incurred to deliver the case management services defined in the RFP or IFB which are not included above in paragraph (2)(A)1., (2)(A)2., (2)(A)3., (2)(A)4., or (2)(A)5. Such costs include expenses for general administrative functions and overhead.

7. Provider costs shall be determined and validated by a third-party contractor retained by CD or the Department of Social Services for that purpose. The provider shall submit any and all information that CD, the Department of Social Services, or the third-party contractor may require to validate the cost report. The provider shall certify such information is truthful, accurate, and complete.

8. Provider costs shall include any applicable credits or payments received through federal or state funding sources or private contributions.

9. Industry cost reports shall include any audited financial statements for the applicable time period under review;

(B) Cost to CD for the three (3) previous calendar years for similar services identified in the RFP or IFB;

(C) Historical expenditures of agencies contracted to provide the services identified in the RFP or IFB for up to three (3) previous calendar years. These expenditures shall include any payments the contractor has made on behalf of the children and families receiving services identified in the RFP or IFB;

(D) Historical expenditures of the CD for up to three (3) previous calendar years for all services identified in the RFP or IFB which have been provided to children placed in out-of-home care in the regions to be served by the foster care case management contractors. CD expenditures shall only be utilized in conjunction with industry cost reports and/or historical expenditures of agencies contracted to provide the services identified in the RFP or IFB; and

(E) CD shall consider all applicable state and federal laws and regulations when a cap is established.

(6) The contract shall provide for the payment of incentives to recognize accomplishment of case goals and corresponding cost savings to the state.

(A) For contracts effective on or before September 30, 2011, incentives shall be provided when contractors exceed the permanency expectations identified in the contract as follows:

1. The contract shall identify the percentage of children who are to achieve permanency in a twelve (12)-month period. Permanency shall be defined as reunification with the child's parent(s) or legal guardian(s), a finalized adoption, or establishment of a legal guardianship;

2. CD shall refer the number of cases in the Notice of Award during the first month of the contract year. CD shall refer additional cases throughout the contract year with the intention of replacing cases which are expected to move to permanency each month based on the percentage of children who are to achieve permanency as identified in the contract; and

3. The contractor shall be paid monthly for the number of cases awarded, regardless of the number they actually serve, except in the following situations:

A. CD shall reduce the payment when CD determines it is in the best interest of a child to reassign the case to CD staff and the case is not replaced. CD shall reduce payment by the number of cases which have been disenrolled and reassigned for case management which were not replaced;

B. CD shall reduce payment when the contractor is placed on referral hold as the result of the contractor's staff involvement with an unacceptable, egregious situation as defined in the contract. Payment shall be reduced by the number of cases which CD is unable to refer while the contractor is on referral hold due to an egregious situation. Egregious situations are defined in this rule to include any situation which seriously impacts the delivery of services to a child or family assigned to the contractor, including a material breach of the contract with the division, and shall include, but is not limited to, the following:

(I) Court contempt order;

(II) Violating the condition(s) of a court order;

(III) Unsafe environments or inappropriate out-of-home provider as evidenced by the following:

(a) Placement in unlicensed foster homes or facilities unless approved by the court;

(b) Placements with a provider without conducting a background screening;

(c) Placements with a provider with a failed background screening as defined in the CD Child Welfare Manual;

(d) Placements without full compliance with the requirements of the Interstate Compact on the Placement of Children (section 210.620, RSMo); and

(e) Placements without court approval where court approval is required;

(IV) Breaches of confidentiality as defined in the contract;

(V) Intentionally, recklessly, knowingly, or negligently entering false data in CD's automated case management system;

(VI) Failure to comply with the requirement to report suspected child abuse and neglect, child injuries, child fatalities, or other critical incidents as required by contract and/or as required by section 210.115, RSMo; and

(VII) Other violations of federal or state law;

C. The contractor shall not invoice for reentries into care within twelve (12) months of previous exit except under those circumstances described below—

(I) The contractor shall be paid for reentries into care during the contract year whereby the number of cases replacing those which are expected to move to permanency each month shall be reduced to correspond with the number of reentries when—

(a) The contractor does not have an opportunity to serve the case or the court terminates jurisdiction and there is clear and convincing documentation to support the contractor was against the release of jurisdiction;

(b) Reunification does not occur; and

(c) The case has been replaced; and

(II) The contractor shall be paid for reentries into care during the next contract year whereby the reentry into care shall count as an active case at the beginning of the contract year when—

(a) The contractor does not have an opportunity to serve the case or the court terminates jurisdiction and there is clear and convincing documentation to support the contractor was against the release of jurisdiction; and

(b) Reunification did occur when the court first terminated jurisdiction after assignment to the contractor;

D. CD shall reduce the monthly case rate to remove the foster care maintenance payment for those children who have been enrolled in the interdivisional agreement through the Mental Retardation and Developmental Disabilities (MRDD) waiver with the Missouri Department of Mental Health; and

E. CD shall reduce the monthly case rate to reimburse the contractor for only case management services when a child meets the definition of a catastrophic case as defined in the contract and CD is providing additional funding for the child.

(B) For new contracts issued based on an RFP or IFB on or after October 1, 2011, subject to available appropriation, CD shall pay an incentive for the sum of the monthly differences between the number of children who are expected to achieve permanency as defined in the contract and the number of children who do achieve permanency when the one-for-one case replacement methodology is utilized. Permanency shall be defined as reunification with the child's parent(s) or legal guardian(s), a finalized adoption, or establishment of a legal guardianship. The following provisions shall apply to the administration of the incentive:

1. The percentage of children which are to achieve permanency in a twelve (12)-month period shall be based on the following percentage, whichever number is higher:

A. The percentage of children who move to permanency within a region, utilizing an average for all counties served within the region; or

B. The percentage of children contractors serve who move to permanency within a region, utilizing an average of the performance of contractors serving the region;

2. The contractor may return cases to CD when children have been placed with their parent(s) for more than ninety (90) days. The contractor may return cases to CD when children have been placed with their legal guardian(s), from whom they were removed, for more than ninety (90) days. The contractor may retain management of the case after ninety (90) days only with the prior, written permission of the CD. When permission is granted, the contractor shall understand the permanency expectation will not change. The contractor shall return cases when an adoption has been finalized, the courts have awarded a legal guardianship, and when the juvenile court has terminated jurisdiction over the child. CD may replace such cases on a one-for-one basis. When the one-for-one case replacement methodology is utilized, CD shall replace cases in the following order of preference if cases are available:

A. The next child and any sibling who enter care within ten (10) calendar days in the county where the case was returned;

B. A child and any sibling currently case managed by CD in the county where the case was returned with services being provided by a supervisor or coworker due to the extended absence of the service worker;

C. A child and any sibling which entered care within thirty (30) calendar days in the county where the case was returned which is case managed by CD;

D. A child and any sibling from a county other than the one where the record was returned which is served by the contracted provider and meets the criteria set forth in subparagraph (6)(B)2.A., (6)(B)2.B., or (6)(B)2.C. above, when agreeable to the contractor; and

E. In the event the contractor is assigned more active cases than awarded in an effort to keep one (1) worker assigned to a sibling group, cases shall not be replaced until such a time when the contractor is serving the amount of active cases awarded. Active cases do not include children who have been placed with their parent(s) for more than ninety (90) days unless the CD has granted permission for the contractor to keep the case; children who have been placed with their legal guardian(s), from whom they were removed, for more than ninety (90) days unless the CD has granted permission for the contractor to keep the case; children who have been adopted; those situations where the courts have awarded a legal guardianship; situations where the juvenile court has terminated jurisdiction over the child; or reentries into care unless they meet the criteria specified in part (6)(A)3.C.(I) above or the rate of re-entries or the number of re-entries into care within twelve (12) months has not exceeded the allowable rate or number as defined in (6)(B) 3.D. below. The contractor shall not be assigned a sibling group which would increase the number of cases awarded by more than two percent (2%). The contractor shall inform CD of the additional number of cases which may need to be replaced to keep the contractor at the number of cases awarded by the end of the contract year;

3. The contractor shall be paid for the number of cases awarded except in the following situations:

A. Payment shall be reduced in the following and subsequent months during the contract year and subsequent renewal periods to correspond with the number of cases which could not be assigned when the counties have no case which meets any of the criteria identified in subparagraph (6)(B)2.A., (6)(B)2.B., (6)(B)2.C., or (6)(B)2.D. above. CD reserves the right to increase the number of referrals during subsequent renewal periods when the number of children entering CD's custody increases in the geographic region served by the contractor, when the provider is agreeable to such;

B. CD shall reduce the payment when CD determines it is in the best interest of a child to reassign the case to CD staff and the case is not replaced. CD shall reduce payment by the number of cases which have been disenrolled and reassigned for case management which were not replaced;

C. CD shall reduce payment when the contractor is placed on referral hold as the result of the contractor's staff involvement with an unacceptable, egregious situation as defined in the contract. Payment shall be reduced by the number of cases which CD is unable to refer while the contractor is on referral hold;

D. CD shall set an allowable rate of re-entries or the number of re-entries into care within twelve (12) months of previous exit, which shall not include the re-entries defined below. The rate or the number allowed shall be based on historical data. CD, at its sole discretion, may adjust this rate or number based on mitigating factors. The contract shall set forth that after the rate is exceeded, the contractor shall not be paid for cases exceeding the allowable number of

re-entries set forth in the contract or shall be assessed a penalty after the rate is exceeded. If a penalty is assessed, the penalty shall be based on a methodology set forth in the contract.

(I) The reentry into care will count as an active case and the contractor will be paid for the case when CD is able to determine that the contractor did not have an opportunity to serve the case or the court terminated jurisdiction and there is clear and convincing documentation to support the contractor was against the release of the jurisdiction. In the event the contractor is serving more active cases than awarded as the result of the reentry into care, they shall not be paid for such. However, cases shall not be replaced until such a time when the contractor is serving the amount of active cases awarded;

E. The monthly case rate shall be reduced to remove the foster care maintenance when the contract specifies the division shall be responsible for such; and

F. CD shall reduce the monthly case rate to reimburse the contractor for only case management services when a child meets the definition of a catastrophic case as defined in the contract and CD is providing additional funding for the child;

4. CD shall determine the number of children achieving permanency during the contract year while being served by the contractor. The contractor will be paid for the sum of the monthly differences between the number of children who are expected to achieve permanency as defined in the contract and the number of children who do achieve permanency, subject to available appropriation, as follows:

A. Contractors shall be paid the monthly amount bid and awarded for the sum of the monthly differences during the contract year as identified in paragraph (6)(B)4. above, subject to available appropriation; and

B. The incentive shall be a one (1)-time payment for the number of children who exceeded the permanency standard during the contract year as identified in paragraph (6)(B)4. above; and

5. CD reserves the right in its sole discretion to reduce the number of cases assigned in subsequent contract years with payment reduced to correspond when the contractor fails to meet the permanency standard defined in the contract. CD also reserves the right to terminate the contract. In the event the contractor fails to meet the permanency standard and the number of cases are reduced in subsequent contract years, CD may reduce the number of cases awarded as follows:

A. CD may request the return of active cases;

B. CD may not replace cases which are closed by the contractor; and

C. CD will reduce payment to correspond with the number of active cases served.

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

ORDER OF RULEMAKING

By the authority vested in the Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration under sections 374.045 and 376.384, RSMo Supp. 2010, the director rescinds a rule as follows:

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

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on May 16, 2011 (36 MoReg 1345–1346). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.