

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

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 If an existing rule is to be amended or rescinded, it will have a heading of proposed amendment or proposed rescission.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

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

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

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

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

Proposed Amendment Text Reminder:

**Boldface text indicates new matter.**

*[Bracketed text indicates matter being deleted.]*

**Title 4—DEPARTMENT OF ECONOMIC  
DEVELOPMENT  
Division 150—State Board of Registration for the  
Healing Arts  
Chapter 2—Licensing of Physicians and Surgeons**

**PROPOSED AMENDMENT**

**4 CSR 150-2.125 Continuing Medical Education.** The board is proposing to amend sections (1) and (2).

*PURPOSE: This amendment deletes AMA's Category 2 CME from the rule.*

(1) Effective February 1, 2002, each licensee shall complete and report at least fifty (50) hours of continuing medical education each renewal period. The board shall not issue a renewal of a licensee's

certificate of registration unless the licensee demonstrates completion of fifty (50) hours of continuing medical education accredited by the American Osteopathic Association (AOA) as Category 1-A or 2-A, by the American Medical Association (AMA) as Category 1 *[or Category 2—as further specified in this rule,]* or American Academy of Family Practice Prescribed Credit, in the immediately preceding reporting period. *[A maximum of twenty (20) hours of AMA Category 2 education for which documented credit is given may be counted towards the fifty (50)-hour requirement.]* A licensee is not required to complete any continuing medical education hours in the renewal period in which the licensee is initially licensed to practice the healing arts in Missouri if the licensee has not previously held a permanent license to practice the healing arts in Missouri or any other state in the United States of America. The period for completion of the continuing medical education requirements shall be the twenty-four (24)-month period beginning January 1 of each even-numbered year and ending December 31 of each odd-numbered year. A licensee who has failed to obtain and report, in a timely fashion, fifty (50) hours of continuing medical education shall not engage in the practice of medicine unless an extension is obtained pursuant to section (4) of this rule.

(2) Each licensee shall certify by *[signature]* **attestation**, under penalty of perjury, that s/he has completed the required hours of continuing medical education listed by him/her on the renewal form (see 4 CSR 150-2.040).

*AUTHORITY: sections 334.075 and 334.125, RSMo 2000. Original rule filed Oct. 16, 1991, effective March 9, 1992. For intervening history, please consult the Code of State Regulations. Amended: Filed April 15, 2004.*

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the State Board of Healing Arts, Tina Steinman, Executive Director, PO Box 4, Jefferson City, MO 65102, by facsimile at (573) 751-3166 or via e-mail at healarts@mail.state.mo.us. 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 4—DEPARTMENT OF ECONOMIC  
DEVELOPMENT  
Division 150—State Board of Registration for the  
Healing Arts  
Chapter 2—Licensing of Physicians and Surgeons**

**PROPOSED RULE**

**4 CSR 150-2.153 Reinstatement of an Inactive License**

*PURPOSE: This rule provides the requirements physicians must follow to request reinstatement of a license that has been inactive.*

(1) All applicants shall make application for reinstatement of an inactive license upon a form prepared by the board.

(2) No application will be considered unless fully and completely filled out on the specified form and properly attested.

(3) All applicants must provide, on the application form, a recent unmounted photograph, in size no larger than three and one-half inches by five inches (3 1/2" × 5").

(4) All applications shall be sent to the Missouri State Board of Registration for the Healing Arts, PO Box 4, Jefferson City, MO 65102.

(5) All applicants for reinstatement of an inactive license must submit a fee as specified in 4 CSR 150-2.080. The fee shall be submitted in the form of a cashier's check or money order drawn on a United States bank made payable to the Missouri Board of Healing Arts.

(6) No application will be processed prior to the submission of the required fee in the appropriate form.

(7) All applicants must submit an activity statement documenting all employment, professional and nonprofessional activities since the date the license was placed on inactive status.

(8) All applicants shall have licensure, registration or certification verification submitted from every state and country in which s/he has ever held privileges to practice as a physician. This verification must be submitted directly from the licensing agency and include the type of license, registration or certification, the issue and expiration dates, and information concerning any disciplinary or investigative actions.

(9) An applicant for reinstatement of an inactive license who has not actively practiced as a physician in another state or country throughout the period their Missouri license was inactive, shall submit upon request any documentation requested by the board necessary to verify that the applicant is competent to practice in Missouri. Such documentation may include continuing education, additional training, or applicable documentation acceptable to the board. If an applicant under this subsection has been in inactive status for more than five (5) years, the board may require the applicant to successfully complete reexamination prior to reinstatement.

*AUTHORITY: sections 334.125, RSMo 2000 and 334.002, RSMo Supp. 2003. Original rule filed April 15, 2004.*

*PUBLIC COST: This proposed rule is estimated to cost state agencies and political subdivisions an estimated seventy dollars and forty-one cents (\$70.41) annually for the life of the rule. It is anticipated that the total cost will recur annually for the life of the rule, may vary with inflation and is expected to increase annually at the rate projected by the Legislative Oversight Committee.*

*PRIVATE COST: This proposed rule is estimated to cost private entities an estimated one thousand fourteen dollars and eighty-five cents (\$1,014.85) annually for the life of the rule. It is anticipated that the total costs will recur annually for the life of the rule, may vary with inflation and is expected to increase annually at the rate projected by the Legislative Oversight Committee.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the State Board of Healing Arts, Tina Steinman, Executive Director, PO Box 4, Jefferson City, MO 65102, by facsimile at (573) 751-3166 or via e-mail at healarts@mail.state.mo.us. 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.*

PUBLIC ENTITY FISCAL NOTE

I. RULE NUMBER

Title 4 -Department of Economic Development  
 Division 150 - State Board of Registration for the Healing Arts  
 Chapter 2 - Licensing of Physicians and Surgeons  
 Proposed Rule - 4 CSR 150-2.153 Reinstatement of an Inactive License  
 Prepared March 19, 2004by the Division of Professional Registration

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Annual Cost of Compliance
State Board of Registration for the Healing Arts	\$70.41
<b>Total Annual Cost of Compliance for the Life of the Rule</b>	
	<b>\$70.41</b>

III. WORKSHEET

Applications for reinstatement of an inactive license are mailed by the Licensure Technician I and processed by the Licensure Technician II who reviews the application, updates the information contained in the licensing computer system and mails the licenses. The Licensing Supervisor reviews any questions or problems on the application and provides guidance for resolution.

The board estimates of 5 applications will be received annually. The figures below represent costs paid by the State Board of Registration for the Healing Arts for implementation of this rule.

Employee's salaries were calculated using the annual salary multiplied by 40.47% for fringe benefits and then divided by 2080 hours per year to determine the hourly salary. The hourly salary was then divided by 60 minutes to determine the cost per minute. The cost per minute was then multiplied by the amount of time individual staff spent on the processing of applications or renewals. The total cost was based on the cost per application multiplied by the estimated number of applications or renewals.

STAFF	ANNUAL SALARY	SALARY TO INCLUDE FRINGE BENEFIT	HOURLY SALARY	COST PER MINUTE	TIME PER APPLICATION	COST PER APPLICATION	TOTAL COST
Licensing Supervisor	\$28,584.00	\$38,331.14	\$18.43	\$0.31	15 minutes	\$4.61	\$23.04
Licensure Technician II	\$23,784.00	\$31,894.34	\$15.33	\$0.26	30 minutes	\$7.67	\$38.33
Licensure Technician I	\$20,364.00	\$27,308.12	\$13.13	\$0.22	1 minute	\$0.22	\$1.09

**Total Personal Service Costs \$62.46**

Expense and Equipment Dollars for Initial Applications

Application Printing	\$0.25	
Envelope for Mailing Application	\$0.16	
Postage for Mailing Application	\$0.32	
Printing License	\$0.35	
Envelope for Mailing License	\$0.16	
Postage for Mailing License	\$0.35	
<b>Total Expense and Equipment Cost per Application:</b>	<b>\$1.59</b>	<b>Total Expense and Equipment Costs \$7.95</b>

IV. ASSUMPTION

- The board anticipates 5 individuals will apply for reactivation of their license annually.
- It is anticipated that the total cost will recur annually for the life of the rule, may vary with inflation and is expected to increase annually at the rate projected by the Legislative Oversight Committee.

NOTE: The public fiscal note for this rule only reflects the cost for this particular process. However, private entity fees are set at an amount to cover the total actual cost incurred by the board, which includes personal service, expense and equipment and transfers.

## PRIVATE ENTITY FISCAL NOTE

## I. RULE NUMBER

Title 4 -Department of Economic Development

Division 150 - State Board of Registration for the Healing Arts

Chapter 2 - Licensing of Physicians and Surgeons

Proposed Rule - 4 CSR 150-2.153 Reinstatement of an Inactive License

Prepared March 19, 2004 by the Division of Professional Registration

## II. SUMMARY OF FISCAL IMPACT

Estimate the number of entities by class which would likely be affected by the adoption of the proposed rule:	Classification by type of the business entities which would likely be affected:	Estimated cost of compliance with the rule by affected entities:
5	Applicants (Reinstating Inactive Fee @ \$200)	\$1,000.00
5	Applicants (notary @ \$2.50)	\$12.50
5	Applicants (postage @ \$.37)	\$1.85
	<b>Estimated Annual Cost of Compliance for the Life of the Rule</b>	<b>\$1,014.35</b>

## III. WORKSHEET

See table above.

## IV. ASSUMPTION

1. It is anticipated that the total cost will recur annually for the life of the rule, may vary with inflation and is expected to increase at the rate projected by the Legislative Oversight Committee.

NOTE: The board is statutorily obligated to enforce and administer the provisions of Chapter 326, RSMo. Pursuant to Section 326.319, RSMo, the board shall by rule and regulation set the amount of fees authorized by Chapter 326, RSMo so that the revenue produced is sufficient, but not excessive, to cover the cost and expense to the board for administering the provisions of Chapter 326, RSMo. This proposed amendment is necessary because the board's projected revenue will not support the expenditures necessary to enforce and administer the provisions of Chapter 326, RSMo, which will result in an endangerment to the health, welfare, and safety of the public.

**Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT**

**Division 150—State Board of Registration for the Healing Arts**

**Chapter 4—Licensing of Speech-Language Pathologists and Audiologists**

**PROPOSED AMENDMENT**

**4 CSR 150-4.040 Internationally Trained Applicants.** The board is proposing to amend section (2).

*PURPOSE:* This amendment specifies that the credential evaluation should verify that the applicant's degree be the equivalent of a Speech-Language Pathology or Audiology degree obtained from an institution accredited by the Council on Academic Accreditation of the American Speech-Language Hearing Association.

(2) An internationally trained applicant graduating from a college or university which is not approved and accredited by the American Speech-Language and Hearing Association shall be required to obtain a credential evaluation verifying that the applicant's professional degree is the equivalent of a **Speech-Language Pathology or Audiology degree obtained from an institution accredited by the Council on Academic Accreditation of the American Speech-Language Hearing Association.** The credential evaluation service must be approved by the commission.

*AUTHORITY:* sections 345.020 and 345.050, RSMo [Supp. 1998] 2000. Original rule filed July 1, 1988, effective Oct. 27, 1988. Amended: Filed Nov. 16, 1998, effective July 30, 1999. Amended: Filed April 15, 2004.

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

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

*NOTICE TO SUBMIT COMMENTS:* Anyone may file a statement in support of or in opposition to this proposed amendment with the State Board of Healing Arts, Tina Steinman, Executive Director, PO Box 4, Jefferson City, MO 65102, by facsimile at (573) 751-3166 or via e-mail at healarts@mail.state.mo.us. 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 4—DEPARTMENT OF ECONOMIC DEVELOPMENT**

**Division 150—State Board of Registration for the Healing Arts**

**Chapter 4—Licensing of Speech-Language Pathologists and Audiologists**

**PROPOSED AMENDMENT**

**4 CSR 150-4.053 Acceptable Continuing Education.** The board is proposing to amend subsection (1)(A).

*PURPOSE:* This amendment revises the list of acceptable activities/providers of continuing education.

(1) A minimum of twenty (20) hours of the required thirty (30) hours of continuing education must be obtained as follows:

(A) Activity/**Provider** approved by the American Speech-Language-Hearing Association (ASHA), the American Academy of

Audiology (AAA), the American Medical Association (AMA), the National Center for Hearing Assessment and Management, the Centers for Disease Control, the National Institute on Deafness and other Communication Disorders, the American Academy of Otolaryngology-Head and Neck Surgery, the American Academy of Pediatrics and the American Academy of Neurology; or courses sponsored by the Missouri Speech-Language-Hearing Association (MSHA) or the Missouri Academy of Audiology (MAA), the Department of Elementary and Secondary Education (DESE), or the Council for Exceptional Children (CEC); and/or

*AUTHORITY:* sections 345.030 and 345.051, RSMo [Supp. 1998] 2000. Original rule filed Nov. 17, 1997, effective June 30, 1998. Amended: Filed Nov. 16, 1998, effective July 30, 1999. Amended: Filed April 15, 2004.

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

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

*NOTICE TO SUBMIT COMMENTS:* Anyone may file a statement in support of or in opposition to this proposed amendment with the State Board of Healing Arts, Tina Steinman, Executive Director, PO Box 4, Jefferson City, MO 65102, by facsimile at (573) 751-3166 or via e-mail at healarts@mail.state.mo.us. 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 4—DEPARTMENT OF ECONOMIC DEVELOPMENT**

**Division 150—State Board of Registration for the Healing Arts**

**Chapter 4—Licensing of Speech-Language Pathologists and Audiologists**

**PROPOSED AMENDMENT**

**4 CSR 150-4.205 Procedural Process for Registration.** The board is proposing to amend subsections (2)(A) and (2)(B).

*PURPOSE:* This amendment outlines the requirements and procedures for internationally trained applicants applying for a speech-language pathology assistant registration.

(2) An application will not be considered as officially submitted unless completely filled out, properly attested and the application fee has been received by the board. The application fee must be submitted in the form of a cashier's check or money order payable to the Missouri Board of Healing Arts, drawn on a United States bank. The following documents are necessary to be filed with the board in order to deem the application complete:

(A) [Prior to January 1, 2005 all a] Applicants must furnish official transcripts from one or more accredited colleges or universities, confirming a bachelor's degree in speech-language pathology or an associate's degree as a speech-language pathology assistant. Such transcripts shall evidence completion of the coursework and clinical practicum requirements equivalent to that required by the Council on Academic Accreditation of the American Speech-Language and Hearing Association. Transcripts shall detail all coursework and clinical practicum hours and document the degree(s) awarded and area(s) of emphasis.

(B) [On or after January 1, 2005 all applicants must furnish official transcripts confirming a minimum of an associate's degree as a speech-language pathology assistant from

one or more accredited colleges or universities which present evidence of the completion of coursework and clinical practicum requirements equivalent to that required or approved by the Council of Academic Accreditation of the American Speech-Language-Hearing Association.] Internationally trained applicants graduating from a college or university which is not approved and accredited by the American Speech-Language and Hearing Association shall be required to obtain a credential evaluation verifying that the applicant's professional degree is equivalent to a degree obtained by an institution approved and accredited by the American Speech-Language and Hearing Association. The credentialing evaluation service must be approved by the commission.

*AUTHORITY: sections 345.015, [and] 345.030 and 345.050, RSMo [Supp. 1999] 2000. Original rule filed July 31, 2000, effective Feb. 28, 2001. Amended: Filed April 15, 2004.*

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the State Board of Healing Arts, Tina Steinman, Executive Director, PO Box 4, Jefferson City, MO 65102, by facsimile at (573) 751-3166 or via e-mail at healarts@mail.state.mo.us. 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 4—DEPARTMENT OF ECONOMIC DEVELOPMENT

##### Division 240—Public Service Commission

#### Chapter 13—Service and Billing Practices for Residential Customers of Electric, Gas and Water Utilities

#### PROPOSED AMENDMENT

**4 CSR 240-13.055 Cold Weather Maintenance of Service: Provision of Residential Heat-Related Utility Service During Cold Weather.** The commission proposes to eliminate an unneeded reference to the states Utilicare program; add a provision dealing with disconnection notices; transfer of service; defaults on pay agreements; and other changes that may be submitted in comments.

*PURPOSE: The changes in this amendment require that disconnection of service notices only be issued to customers where a real intent to disconnect exist, that customers who move from one residence to another within the same utility service territory not be treated as new customers, that customers who pay their payment agreement amount before disconnection can continue to be on a deferred payment plan and that customers who break a payment agreement are eligible for payment plans under the cold weather rule if their last default on a payment agreement was three (3) or more years ago.*

(1) The following definitions shall apply in this rule:

(C) Low Income Home Energy Assistance Program (LIHEAP) means the federal LIHEAP administered by the Missouri Division of Family Services under section 660.110, RSMo; and

(D) Registered elderly or handicapped customer means one who is sixty (60) years old and above, or is handicapped to the extent that s/he is unable to leave the premises without assistance and who files with the utility a form approved by the commission attesting to the fact that s/he meets these qualifications and which also lists an

agency or person the utility shall contact as required in this rule.]; and/

[(E) Utilicare means the state program of energy assistance established by section 660.122, RSMo.]

(4) A utility may not threaten to disconnect service when it has no present intent to disconnect service or when actual disconnection is prohibited under this rule. Notice of the intent to disconnect shall be used only as a warning that service will in fact be disconnected in accordance with the procedures set forth in this rule, unless the customer or occupant remedies the situation which gave rise to the enforcement efforts of the utility.

[(4)](5) Weather Provisions. Discontinuance of gas and electric service to all residential users, including all residential tenants of apartment buildings, for nonpayment of bills where gas or electricity is used as the source of space heating or to control or operate the only space heating equipment at the residence is prohibited—

(A) On any day when the National Weather Service local forecast between 6:00 a.m. to 9:00 a.m., for the following twenty-four (24) hours predicts that the temperature will drop below thirty degrees Fahrenheit (30° F); and

(B) On any day when utility personnel will not be available to reconnect utility service during the immediately succeeding day(s) (Period of Unavailability) and the National Weather Service local forecast between 6:00 a.m. to 9:00 a.m. predicts that the temperature during the Period of Unavailability will drop below thirty degrees Fahrenheit (30° F).

(C) Nothing in this section shall prohibit a utility from establishing a higher temperature threshold below which it will not discontinue utility service.

[(5)](6) Discontinuance of Service. From November 1 through March 31, a utility may not discontinue heat-related residential utility service due to nonpayment of a delinquent bill or account provided—

(A) The customer contacts the utility and states his/her inability to pay in full;

(B) The customer applies for financial assistance in paying his/her heat-related utility bill from any federal, state, local or other heating payment fund program for which s/he may be eligible;

(C) The utility receives an initial payment and the customer enters into a payment agreement both of which are in compliance with section [(8)](10) of this rule;

(D) The customer complies with the utility's requests for information regarding the customer's monthly or annual income; and

(E) There is no other lawful reason for discontinuance of utility service.

(7) Whenever a residential customer, whose service is paid in full or under a payment agreement that they have not broken, moves to another residence within the territory served by a utility, the request for like service at the new residence shall not be considered an application for new service for purposes of this rule. Such service shall be provided at the new residence and shall be considered a continuation of the prior service. A utility shall not have the right to accelerate collection or to terminate service, or to change the terms of service to any customer by virtue of the change in the customer's residence.

[(6)](8) Deposit Provisions. A utility shall not assess a new deposit or bill deposits that were previously assessed during or after the period of this rule to those customers who enter into a payment agreement and make timely payments in accordance with this rule.

[(7)](9) Reconnection Provisions. If a utility has discontinued heat-related utility service to a residential customer due to nonpayment of a delinquent account, the utility, from November 1 through March

31, shall reconnect service to that customer without requiring a deposit; provided—

(A) The customer contacts the utility, requests the utility to reconnect service and states an inability to pay in full;

(B) The customer applies for financial assistance in paying his/her heat-related utility bill from any federal, state, local or other heating payment fund program for which s/he may be eligible;

(C) The utility receives an initial payment and the customer enters into a payment agreement both of which are in compliance with section *[(8)](10)* of this rule;

(D) The customer complies with the requests of the utility for information regarding the customer's monthly or annual income;

(E) None of the amount owed is an amount due as a result of unauthorized interference, diversion or use of the utility's service, and the customer has not engaged in such activity since last receiving service; and

(F) There is no other lawful reason for continued refusal to provide utility service.

*[(8)](10)* Payment Agreements. The payment agreement for service under this rule shall comply with the following:

(A) A pledge of an amount equal to any payment required by this section by the agency which administers LIHEAP, *Utilicare* or ECIP, or a combination of these, shall be deemed to be the payment required. The utility shall confirm in writing the terms of any payment agreement under this rule, unless the extension granted the customer does not exceed two (2) weeks.

(B) Payment Calculations.

1. The utility shall first offer a twelve (12)-month budget plan which is designed to cover the total of all preexisting arrears, current bills and the utility's estimate of the ensuing bills.

2. If the customer states an inability to pay the budget plan amount, the utility and the customer may upon mutual agreement enter into a payment agreement which allows payment of preexisting arrears over a reasonable period in excess of twelve (12) months. In determining a reasonable period of time, the utility and the customer shall consider the amount of the arrears, the time over which it developed, the reasons why it developed, the customer's payment history and the customer's ability to pay.

3. A utility shall permit a customer to enter into a payment agreement to cover the current bill plus arrearages in fewer than twelve (12) months if requested by the customer.

4. The company may revise the required payment in accordance with its budget or leveled payment plan.

**5. If a customer defaults on a deferred payment agreement but has not yet had service discontinued by the utility, the utility shall permit such customer to be reinstated on the deferred payment agreement if the customer pays in full the amounts that should have been paid up to that date pursuant to the original payment agreement (including any amounts for current usage which have become past due). A utility shall be obliged to permit such reinstatement only once during the course of a deferred payment agreement.**

(C) Initial Payments.

1. For a customer who has not defaulted on a payment plan under the cold weather rule **within the last three (3) or more years**, the initial payment shall be the amount of the monthly payment calculated in subsection *[(8)](10)(B)* of this rule.

2. For a customer who has defaulted on a payment plan under the cold weather rule **within the last three (3) years**, the initial payment shall be an amount equal to the total of the delinquent installments, unless the utility and customer agree to a lesser amount.

*[(9)](11)* If a utility refuses to provide service pursuant to this rule and the reason for refusal of service involves unauthorized interference, diversion or use of the utility's service situated or delivered on or about the customer's premises, the utility shall maintain records concerning the refusal of service which, at a minimum, shall

include: the name and address of the person denied reconnection, the names of all company personnel involved in any part of the determination that refusal of service was appropriate, the facts surrounding the reason for the refusal and any other relevant information.

*[(10)](12)* The commission shall recognize and permit recovery of reasonable operating expenses incurred by a utility because of this rule.

*[(11)](13)* A utility may apply for a variance from this rule by filing an application for variance with the commission pursuant to the commission's rules of procedure.

*AUTHORITY: sections 386.250 and 393.140, RSMo 2000 and 393.130, RSMo Supp. 2003. Original rule filed June 13, 1984, effective Nov. 15, 1984. Amended: Filed Dec. 30, 1992, effective Oct. 10, 1993. Amended: Filed March 10, 1995, effective Jan. 30, 1996. Emergency amendment filed Nov. 8, 2001, effective Nov. 18, 2001, expired March 31, 2002. Amended: Filed Aug. 16, 2002, effective April 30, 2003. Amended: Filed April 9, 2004.*

*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 expected to cost private entities approximately nine hundred twenty-one thousand dollars (\$921,000) in the first year, and five hundred twelve thousand dollars (\$512,000) each year thereafter, for the life of the rule. These costs may vary with inflation.*

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file comments in support of or in opposition to this proposed amendment with the Missouri Public Service Commission, Dale Hardy Roberts, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the commission's offices on or before June 17, 2004, and should include a reference to Commission Case No. GX-2004-0496. If comments are submitted via a paper filing, an original and eight (8) copies of the comments are required. Comments may also be submitted via a filing using the commission's electronic filing and information system at <<http://www.psc.mo.gov/efis.asp>>. A public hearing regarding this proposed amendment is scheduled for July 9, 2004, at 10:00 a.m. in Room 310 of the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed amendment, and may be asked to respond to commission questions. Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 or Relay Missouri at 711.*

**FISCAL NOTE  
PRIVATE COST**

**I. RULE NUMBER**

Rule Number and Name:	<b>4 CSR 240-13.055 Cold Weather Maintenance of Service: Provision of Residential Heat-Related Utility Service During Cold Weather</b>
Type of Rulemaking:	<b>Proposed Amendment</b>

**II. SUMMARY OF FISCAL IMPACT**

Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule.	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
Seven (7) Natural Gas Utilities	Missouri Public Service Commission Rate Regulated Natural Gas Utilities	\$542,000 per year over the first three years of the rule.
Four (4) Electric Utilities	Missouri Public Service Commission Rate Regulated Electric Utilities	\$107,000 per year over the first three years of the rule

**III. WORKSHEET**

1. The Missouri Public Service Commission (PSC) sent a draft of the proposed amended rule by e-mail to all the PSC rate regulated natural gas and electric utilities in the state asking for the fiscal impact of the proposed amended rule on their operations.
2. All of the PSC rate regulated natural gas and electric utilities responded to this request with numbers reflecting their estimated cost.

Natural Gas Utilities	Initial Implementation Cost	Ongoing Annual Cost
Laclede Gas Company	\$375,000	\$270,000
Missouri Gas Energy	\$300,000	\$200,000
AmerenUE	\$5,000	\$0
Aquila MPS and L&P	\$5,000	\$0
Atmos Energy	\$0	\$0
Southern Missouri Gas	\$0	\$0
Fidelity Natural Gas	\$0	\$0

Electric Utilities	Initial Implementation Cost	Ongoing Annual Cost
AmerenUE	\$5,000	\$0
Kansas City Power & Light	\$216,000	\$42,000
Aquila MPS and L&P	\$5,000	\$0
Empire District Electric	\$10,000	\$0

Total - Gas Utilities	<b>\$685,000</b>	<b>\$470,000</b>
Total - Electric Utilities	<b>\$236,000</b>	<b>\$42,000</b>



#### IV. ASSUMPTIONS

1. The life of the rule is estimated to be indefinite.
2. The lower private entity cost after the first year is based on the fact that there is a one-time initial cost for making changes to notification and billing systems.
3. It is important to note that the majority of the utilities will not experience any fiscal impact after their one-time implementation cost.
4. Fiscal year 2004 dollars were used to estimate cost. No adjustment for inflation is applied.
5. Estimates assume utilities will use all other debt collection options available to them.
6. The rule does not affect the creditor rights and remedies of a utility otherwise permitted by law.
7. The rule does not require a utility to commence service to an applicant engaged in name-switching to avoid payment of bills nor does it require commencement of service when there has been any other type of consumer fraud.
8. Affected entities are assumed to be in compliance with all other Missouri Public Service Commission rules and regulations and with all applicable Missouri statutes.
9. The universe of entities is based on fiscal year 2004 data and is assumed to remain constant.
10. Not all utilities are sending out disconnection notices to customers they have no capability or intent to actually disconnect so not all utilities are affected by this provision of the proposed amendment.
11. Not all utilities are treating customers who move from one residence to another in the same service territory as new customers so not all utilities are affected by this provision of the proposed amendment.
12. Some utilities are currently accepting payments from customers who are late on a payment agreement amount but have not yet been disconnected without terminating their payment arrangement so those utilities are not affected by this provision of the proposed amendment.
13. Not all utilities are denying cold-weather rule payment plans to all customers who have ever defaulted on a payment plan under the cold weather rule so those utilities are not affected by this provision of the proposed amendment.

14. A level of un-collectibles is included in the revenue requirements for each regulated gas and electric utility. The level may vary from year to year for many reasons other than the effects of this proposed amendment, including, for example: the economy, the level of unemployment in certain areas, the weather and the price of natural gas.
15. The dollar amounts in section III above detail initial implementation cost and ongoing annual cost. The total dollar amounts for compliance with the rule in the first three years are added together and divided by three to arrive at the dollar amounts given in section II above.

**Title 5—DEPARTMENT OF ELEMENTARY AND  
SECONDARY EDUCATION  
Division 80—Teacher Quality and Urban Education  
Chapter 805—Educator Preparation**

**PROPOSED AMENDMENT**

**5 CSR 80-805.015 Procedures and Standards for Approval of Professional Education Programs in Missouri.** The State Board of Education is proposing to amend the Purpose, sections (1), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13) and the incorporated by reference materials, delete sections (2) and (3), and add new sections (3), (4), (5), (13), (14), (15) and (16).

*PURPOSE: This amendment updates the format of the rule to be consistent with other administrative rules, clarifies language in the rule, provides additional criteria for the review and evaluation of preliminary teacher education programs in Missouri, and streamlines the number of administrative rules.*

*PURPOSE: This rule provides procedures and standards for approval of professional education programs in baccalaureate degree granting four (4)-year colleges and universities in Missouri. The rule also provides procedures and standards for approval of preliminary teacher education programs in associate's degree granting two (2)-year colleges in Missouri and acceptance of credits from the two (2)-year colleges for purposes of teacher certification and student transfer to the four (4)-year colleges and universities.*

(1) For the purpose of this rule, unless the context clearly requires otherwise, the following terms shall mean:

(A) Advanced certification program/—/. A post-baccalaureate [degree] program leading to [advanced] **additional** certification [or endorsement];

(B) Annual reports/—/. Written reports prepared by the professional education unit each year attesting to its continuing capacity to meet the [board's] standards and requirements of the **State Board of Education (board)**;

(C) Approved program/—/. The status granted a professional education program by the [State Board of Education] **board** authorizing the recommendation of candidates for certification as a result of the program having demonstrated its capacity to satisfy the [board's] standards for the preparation of educational professionals, not to exceed [five (5)] **seven (7)** years;

[(D)] *Board—The Missouri State Board of Education;*

[(E)](D) Candidates/—/. Individuals [who are seeking admission] **admitted** to or [are] enrolled in programs for initial or advanced preparation of teachers or other professional school [staff] **personnel**;

[(F)](E) Certification/—/. The official recognition by the [State Board of Education] **board** that an individual has met state requirements and is, therefore, approved to practice as a duly certified/licensed education professional;

[(G)](F) Clinical experiences/—/. [Program components] **Activities** that are conducted in off-campus settings, such as a school, classroom, or community center. They include classroom observations, tutoring, assisting teachers and administrators, student teaching, and internships;

[(H)](G) Conceptual framework/—/. The rationale and organizing principles that guide the development of the design, [and] curriculum, **and accountability** for professional education [including the categorization of knowledge];

[(I)](H) Conditional [program] approval/—/. The status granted a professional education program by the [State Board of Education] **board** authorizing an institution to recommend candidates for certification from such programs for a period, not to exceed two (2) years, with conditions and limitations stipulated by the board;

[(J)](I) Denial of approval/—/. [State Board of Education] **Board** action [which] **that denies or** removes the authorization of an institution to recommend candidates for state certification from programs [which] **that** fail to meet the [board's] standards and requirements for the preparation of educational professionals;

[(K)] *Department—The Missouri Department of Elementary and Secondary Education;*

[(L)](J) Diversity/—/. [The variety of backgrounds of candidates, faculty, and school personnel] **Differences among groups of people** based on culture, ethnicity, race, language, socio-economic status, gender, regional/geographic background and exceptionalities. The [department] **Department of Elementary and Secondary Education (DESE)** does not consider diversity of geographic origins, religion, or language group to be good faith representation of wide-range cultural diversity;

[(M)](K) Evaluation team/—/. A team selected by [the Department of Elementary and Secondary Education] **DESE** for the purpose of conducting an on-site review and evaluation of an institution's professional education unit and programs; the team includes a member of [the department] **DESE**, faculty from elementary or secondary schools and institutions of higher education possessing [State Board of Education] **board** approved professional education programs;

[(N)](L) Governance/—/. The system and structure for defining policy and administering procedures for the professional education unit;

[(O)](M) Initial certification programs/—/. Programs at the baccalaureate or post-baccalaureate levels that prepare candidates for their first [teaching] **certificate of license to teach**;

[(P)](N) Interim review/—/. A review conducted during a period of program approval, consistent with board procedures and standards and authorized by the commissioner of education when s/he has reason to believe that an institution or an approved program is no longer in compliance with state standards or when an institution recommends a candidate for certification from a nonapproved program;

(O) **Preliminary professional education program. A program that provides the introductory or early phases of teacher preparation culminating in a two (2)-year associate's degree;**

[(Q)](P) Professional community/—/. Professional education candidates, faculty/staff in PK-12 schools, higher education faculty, and others in the educational enterprise;

[(R)](Q) Professional education unit/—/. [The professional education unit is the] **An institution of higher education**, college, school, department, or other administrative entity within the institution that is primarily responsible for the initial and advanced preparation of teachers and other professional school personnel;

[(S)](R) Professional education faculty/—/. Those individuals **employed by a college or university** who teach one (1) or more courses in education, provide services to education students (e.g., advising or supervising student teaching), or administer some portion of the unit; professional education faculty may include both higher education faculty and school-based personnel who are considered to be members of an institution's professional education unit;

[(T)](S) Professional education program/—/. A planned sequence of courses and experiences leading to a degree, state certification, and/or adequate preparation to provide professional education services in schools;

[(U)](T) Program approval **process/—**/. The [process] **sequence of events** by which professional education programs are reviewed and evaluated by [the Department of Elementary and Secondary Education] **DESE** to determine if they meet the [board's] standards for the preparation of school personnel; and

[(V)](U) Scholarly activities/—/. The active involvement in one's area of specialization as demonstrated through such faculty activities as research, articles published, program evaluation studies, documentation of ongoing activities, grant seeking, and presentations at professional meetings.

*[(2) Each institution of higher education desiring board approval of its professional education program(s) shall submit a written request to the commissioner of education.*

*[(3) An institution desiring program approval shall submit to the department, Teacher Education Section, annual reports in a form consistent with the rules, regulations and appendices promulgated by the board.]*

*[(4)](2) Professional education programs at institutions of higher education shall be evaluated according to the [unit] standards listed below and in the Missouri Standards for Teacher/s/ Education Programs (MoSTEP) [(Appendix A) and Standards for School Leaders (Appendix B),] and the **Benchmarks for Preliminary Teacher Education Programs**, which are hereby incorporated by reference and made a part of this rule.*

(A) Standard 1: Performance Standards for Education Professionals. (Initial and Advanced) The professional education unit ensures that candidates for professional certification possess the knowledge, skills, and competencies defined as appropriate for their area of responsibility.

(B) Standard 2: Program and Curriculum Design. (Initial and Advanced) The professional education unit has high quality professional education programs that are derived from a conceptual framework that is knowledge-based, articulated, shared, coherent, consistent with the unit and/or institutional mission, and continuously evaluated.

(C) Standard 3: Clinical Experiences. (Initial and Advanced) The professional education unit ensures that clinical experiences for programs are well-planned, of high quality, integrated throughout the program sequence, and continuously evaluated.

(D) Standard 4: Composition, Quality, and Competence of Student Population. (Initial and Advanced) The professional education unit has and implements plans to recruit, admit, and retain a diverse student population who demonstrate potential for professional success in schools.

(E) Standard 5: Qualifications, Composition, Assignments, and Development of Professional Education Faculty, and Quality of Instruction. (Initial and Advanced) The professional education unit has and implements plans to recruit, employ[,] and retain a diverse faculty who demonstrate professional qualifications and high quality instruction.

(F) Standard 6: Governance, Organization, and Authority. (Initial and Advanced) Governing boards and administrators shall indicate commitment to the preparation of educational personnel, as related to the institution's mission and goals, by adopting and implementing policies and procedures supportive of programs for the preparation of professional educators.

(G) Standard 7: Professional Community. (Initial and Advanced) The professional education unit and the professional [education] community collaborate to improve programs for the preparation of school personnel and to improve the quality of education in the schools.

(H) Standard 8: Resources [F]for Operating the Unit [A]and [F]for Supporting Teaching [A]and Learning. (Initial and Advanced) The professional education unit has sufficient facilities, equipment, and budgetary resources to fulfill its mission/s/ and offer quality programs. The unit has adequate resources to support teaching and scholarship by faculty and candidates.

**(3) In lieu of MoSTEP listed above, the board will recognize the standards of the National Council for Accreditation of Teacher Education (NCATE) as they apply to a professional education unit in an institution of higher education.**

**(4) An institution of higher education desiring initial approval of its professional education program(s) shall submit a written**

**request and supporting documentation in accordance with the standards and procedures in MoSTEP.**

**(5) An institution of higher education desiring continuing approval of its professional education program(s) shall submit to DESE annual reports in a form consistent with the rules and regulations promulgated by the board.**

*[(5)](6) An evaluation team shall conduct an on-site review of an institution's professional education program(s) [based upon the institution's responses] to [the standards in its annual reports] **determine compliance with MoSTEP listed above** and shall prepare a report for the commissioner of education.*

*[(6)](7) The commissioner of education shall review the team's report and may request additional information from the institution before recommendations are made to the board.*

*[(7)](8) For professional education programs [rated unsatisfactory] that receive a rating of "not met" by the evaluation team or programs for which the commissioner of education has indicated to the institution that s/he may recommend denial of approval, the institution shall be afforded an opportunity for a hearing to provide evidence to support approval or conditional approval of those programs. The hearing shall be conducted by the commissioner of education or his/her designee according to the provisions of Chapter 536, RSMo.*

*[(8)](9) The commissioner of education shall recommend to the board that the professional education program(s) of the institution be granted approval[,] conditional approval; or be denied approval. The recommendation of the commissioner of education shall not include denial of approval to programs for which the institution was not afforded an opportunity for a hearing [to provide evidence to support approval or conditional approval] according to the provisions of Chapter 536, RSMo.*

*[(9)](10) The board shall review the recommendations of the commissioner of education and shall grant approval; [or] conditional approval[,] or deny approval of an institution's professional education program(s). The board shall not deny approval to programs for which the institution was not afforded an opportunity for a hearing [to provide evidence to support approval or conditional approval.] according to the provisions of Chapter 536, RSMo.*

*[(10)](A) Should the board grant conditional approval to any professional education program(s) offered by an institution, the institution's authorization to recommend candidates for certification shall not exceed two (2) years with conditions and limitations stipulated by the board. Conditional approval for a professional education program(s) shall not be extended or renewed without consent of the board or its designee.*

*[(11)](B) Should the board deny approval to any [of an institution's] professional education program(s) offered by an institution of higher education, the commissioner of education shall notify the institution of the denial and inform the institution of the reasons for the denial.*

*[(12)](11) The commissioner of education may authorize an interim review of an institution or an approved professional education program(s) [consistent] in accordance with the rules and regulations promulgated by the board. As a result of the review, and upon the recommendation of the commissioner of education, the board may discontinue an institution's authorization to recommend candidates for certification.*

*[(13)](12) Requisite conditions, guidelines, procedures and standards, as set forth in the rules[,] and regulations [and appendices] promulgated by the board, shall be followed by institutions seeking board approval of their professional education programs.*

(13) DESE will accept, for purposes of teacher certification and student transfer to baccalaureate degree granting four (4)-year institutions of higher education, credits from state-approved preliminary teacher education programs in Missouri's two (2)-year colleges to meet general education, subject knowledge and/or professional education competencies equivalent to those in the first two (2) years of the baccalaureate educational experience.

(14) All institutions of higher education in Missouri seeking DESE approval for preliminary professional education programs shall be reviewed and evaluated by DESE and approved by the board pursuant to MoSTEP and the Benchmarks for Preliminary Teacher Education Programs.

(15) It is not the intent of this rule to cause Missouri's four (4)-year teacher preparation institutions to deny acceptance of credit for candidates from any two (2)-year or other four (4)-year institutions of higher education.

(16) It is not the intent of this rule to deny acceptance of any non-professional education credit earned at two (2)-year community colleges to meet the renewal requirements for a certificate of license to teach.

*AUTHORITY:* sections 161.092[,] and 168.021, RSMo Supp. [2002] 2003 and 161.097[,] and 161.099 [and 168.021], RSMo 2000. This rule was previously filed as 5 CSR 80-800.015. Original rule filed Sept. 29, 1986, effective Jan. 12, 1987. Amended: Filed Aug. 1, 1988, effective Nov. 25, 1988. Amended: Filed April 25, 1990, effective Sept. 28, 1990. Amended: Filed Oct. 31, 1996, effective June 30, 1997. Amended: Filed Dec. 23, 1998, effective Aug. 30, 1999. Amended: Filed July 28, 2000, effective Feb. 28, 2001. Amended: Filed Sept. 24, 2002, effective April 30, 2003. Amended: Filed April 5, 2004.

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

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

*NOTICE TO SUBMIT COMMENTS:* Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Elementary and Secondary Education, Attn: Dr. Charles Brown, Assistant Commissioner, Teacher Quality and Urban Education, PO Box 480, Jefferson City, MO 65102-0480. 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 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION**

**Division 80—Teacher Quality and Urban Education  
Chapter 805—Educator Preparation**

**PROPOSED RESCISSION**

**5 CSR 80-805.016 Procedures for Approval of Preliminary Professional Education Programs in Missouri.** This rule provided procedures and standards for the approval of preliminary professional education programs in associate degree granting two (2)-year colleges in Missouri.

*PURPOSE:* This rule is being rescinded because the authorization of two (2)-year colleges to offer professional education course work will

be included in rule 5 CSR 80-805.015, *Procedures and Standards for Approval of Professional Education Programs in Missouri*, and thus it is no longer needed as a separate rule.

*AUTHORITY:* sections 161.092, 161.097 and 161.099, RSMo 1994, and 168.021, RSMo Supp. 1999. Original rule filed July 28, 2000, effective Feb. 28, 2001. Rescinded: Filed April 5, 2004.

*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 Department of Elementary and Secondary Education, Attn: Dr. Charles Brown, Assistant Commissioner, Teacher Quality and Urban Education, PO Box 480, Jefferson City, MO 65102-0480. 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 8—DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS  
Division 10—Division of Employment Security  
Chapter 3—Unemployment Insurance**

**PROPOSED AMENDMENT**

**8 CSR 10-3.010 Registration and Claims in General.** The division is amending section (9).

*PURPOSE:* This amendment deletes reference to rule 8 CSR 10-3.020, which is being rescinded.

(9) A benefit week under this rule begins on Sunday and ends on Saturday, except that a claimant who has been filing claims under [8 CSR 10-3.020 or] 8 CSR 10-3.040 shall use the same type of weekly period for further claims in the same series.

*AUTHORITY:* sections 288.040, 288.070 and 288.220.5, RSMo 2000. Original rule filed Sept. 30, 1946, effective Oct. 10, 1946. For intervening history, please consult the *Code of State Regulations*. Amended: Filed April 15, 2004.

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

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

*NOTICE TO SUBMIT COMMENTS:* Anyone may file a statement in support of or in opposition to this proposed amendment with the Division of Employment Security, Attn: Gracia Y. Backer, Director, PO Box 59, Jefferson City, MO 65104-0059. 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 8—DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS  
Division 10—Division of Employment Security  
Chapter 3—Unemployment Insurance**

**PROPOSED RESCISSION**

**8 CSR 10-3.020 Registration and Claims of Certain Workers Who Become Totally Unemployed Because of a Mass Layoff Due to a Temporary Cessation of Work.** This rule provided a means to file unemployment claims through the use of the division's form, Notice of Partial or Temporary Total Unemployment.

*PURPOSE:* This rule is being rescinded, as it is no longer needed. Claims for unemployment benefits may be filed through the Internet or by telephone.

*AUTHORITY:* sections 288.030, 288.040, 288.070, 288.130 and 288.220.5, RSMo 1994. Original rule filed Sept. 30, 1946, effective Oct. 10, 1946. For intervening history, please consult the *Code of State Regulations*. Rescinded: Filed April 15, 2004.

*PUBLIC COST:* This proposed rescission will not cost 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 Division of Employment Security, Attn: Gracia Y. Backer, Director, PO Box 59, Jefferson City, MO 65104-0059. To be considered, comments must be received within (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**Title 9—DEPARTMENT OF MENTAL HEALTH  
Division 10—Director, Department of Mental Health  
Chapter 5—General Program Procedures**

**PROPOSED AMENDMENT**

**9 CSR 10-5.210 Exceptions Committee Procedures.** The department proposes to amend section (2).

*PURPOSE:* The purpose of the amendment is to clarify that the exception process neither replaces nor presupposes the appeal process, and to establish that disqualified individuals may not request an exception until twelve (12) months after being disqualified.

(2) Rules Subject to an Exception. Only the following rules may be the subject of an exception:

[(A) Rules related to disqualification from employment under 9 CSR 10-5.190 and 9 CSR 10-5.200;]

[(B)] (A) Licensure rules for residential facilities and day programs promulgated under 9 CSR 40;

[(C)] (B) Certification rules for alcohol and drug abuse programs and psychiatric programs promulgated under 9 CSR 10-7 and 9 CSR 30;

[(D)] (C) Certification rules under 9 CSR 45 for programs serving persons who are developmentally disabled under the Community Based Waiver Program;

[(E)] (D) Any administrative rule promulgated by the Department of Mental Health that specifically allows for an exception[.]; and

(E) Rules related to disqualification from employment under 9 CSR 10-5.190 and 9 CSR 10-5.200. In the context of employment disqualification the following apply.

1. A person may not request an exception until twelve (12) months have passed since the sentence of the court or since the department gave official notice of the person's name being added to the Department of Mental Health disqualification registry.

2. The exceptions option under this administrative rule does not replace or substitute for the appeal procedures afforded under Department Operating Regulation (DOR) 2.205 and 9 CSR 10-5.200 or any other administrative process. A person is not required to exhaust the appeal procedures as a prerequisite to requesting an exception; however, an exception will not be considered while an appeal is pending.

*AUTHORITY:* sections 630.050 and 630.656, RSMo 2000 and 630.170, RSMo Supp. 2003. Original rule filed Feb. 23, 2001, effective Sept. 30, 2001. Amended: Filed, Nov. 3, 2003, effective April 30, 2004. Amended: Filed: April 13, 2004.

*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 by writing to Richard H. Overmann, Regulatory Process Coordinator, Office of Quality Management, Department of Mental Health, PO Box 687, 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 10—DEPARTMENT OF NATURAL RESOURCES  
Division 25—Hazardous Waste Management Commission  
Chapter 17—Dry-Cleaning Environmental Response  
Trust Fund**

**PROPOSED RULE****10 CSR 25-17.010 Applicability**

*PURPOSE:* This rule defines the active and abandoned dry cleaning facilities that are subject to the requirements of this chapter. This rule is designed specifically to protect the quality of groundwater in the state as well as to protect human health and the overall quality of the environment. This rule is promulgated on the authority of sections 260.900 to 260.960, RSMo.

(1) This rule applies to the owner or operator of any active facility or owner or operator of any abandoned facility, on which a dry cleaning facility is or was located, as the term is defined in this rule. This includes coin-operated facilities. The term dry cleaning facility includes all contiguous land, structures and other appurtenances and improvements on the land used in connection with the dry cleaning facility.

(2) Dry cleaning facilities located in prisons, governmental entities, hotels, motels, and industrial laundry facilities are excluded from this rule.

*AUTHORITY:* sections 260.900 and 260.905, RSMo 2000. Original rule filed April 15, 2004.

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

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

**NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS:** The Missouri Hazardous Waste Management Commission will hold a public hearing on this proposed rule and others beginning at 9:00 a.m. on June 16, 2004 at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any person wishing to speak at the hearing shall send a written request to the Secretary of the Hazardous Waste Management Commission at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written requests to speak must be postmarked by midnight on June 2, 2004. Faxed or e-mailed correspondence will not be accepted.

Any person may submit written comments on this proposed rule. Written comments shall be sent to the Director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written comments must be postmarked by midnight on June 25, 2004. Faxed or e-mailed correspondence will not be accepted.

Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program, at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

**Title 10—DEPARTMENT OF NATURAL RESOURCES  
Division 25—Hazardous Waste Management Commission  
Chapter 17—Dry-Cleaning Environmental Response  
Trust Fund**

**PROPOSED RULE**

**10 CSR 25-17.020 Definitions**

*PURPOSE:* This rule defines specific terms used in this chapter.

(1) Definitions.

(A) Definitions beginning with the letter A.

1. "Abandoned dry cleaning facility" means any real property premises or individual leasehold space in which a dry cleaning facility formerly operated.

2. "Active dry cleaning facility" means any real property premises or individual leasehold space in which a dry cleaning facility currently operates.

(B) Definitions beginning with the letter B. *(Reserved)*

(C) Definitions beginning with the letter C.

1. "Chlorinated dry cleaning solvent" means any dry cleaning solvent which contains a compound which has a molecular structure containing the element chlorine.

2. "Claim" means a written demand for money or services from the Dry-Cleaning Environmental Response Trust (DERT) Fund for cleanup at a dry cleaning facility.

3. "Commission" means the Hazardous Waste Management Commission created in section 260.365, RSMo.

4. "Corrective action" means those activities described in subsection 1 of section 260.925, RSMo;

5. "Corrective action plan" means a plan approved by the director to perform corrective action at a dry cleaning facility.

(D) Definitions beginning with the letter D.

1. "Department" unless otherwise stated, means the Missouri Department of Natural Resources.

2. "DERT Fund" means the Dry-Cleaning Environmental Response Trust (DERT) Fund.

3. "Director" means the director of the Missouri Department of Natural Resources.

4. "DNAPL" means dense non-aqueous phased liquid. DNAPLs are chemicals that exist in a denser-than-water, immiscible phase when released to the environment. They include halogenated organic solvents such as tetrachloroethylene (PCE), trichloroethylene (TCE) and 1,1,1-trichloroethane (TCA), substituted aromatics, phthalates, polychlorinated biphenyls (PCB) mixtures, coal and process tars, and some pesticides.

5. "Dry cleaning facility" means a commercial establishment that operates, or has operated in the past in whole or in part for the purpose of cleaning garments or other fabrics on-site utilizing a process that involves any use of dry cleaning solvents. Dry cleaning facility includes all contiguous land, structures and other appurtenances and improvements on the land used in connection with a dry cleaning facility but does not include prisons, governmental entities, hotels, motels or industrial laundries. Dry cleaning facility does include coin-operated dry cleaning facilities.

6. "Dry cleaning solvent" means any and all non-aqueous solvents used or to be used in the cleaning of garments and other fabrics at a dry cleaning facility and includes but is not limited to perchloroethylene, also known as tetrachloroethylene, and petroleum-based solvents, and the products into which such solvents degrade.

7. "Dry cleaning unit" means a machine or device which utilizes dry cleaning solvents to clean garments and other fabrics and includes any associated piping and ancillary equipment and any containment system.

8. "Dry cleaning waste" means waste which is generated at a dry cleaning facility during the cleaning of garments and contains dry cleaning solvents. Some or all of this waste may also be hazardous waste.

(E) Definitions beginning with the letter E.

1. "Environmental response surcharge" means either the annual dry cleaning facility registration surcharge or the dry cleaning solvent surcharge.

2. "Existing contamination" means the discovery of the soil, groundwater, surface and drinking waters in excess of the applicable state cleanup levels. It also includes the presence of DNAPL/free product or vapors in soils, basements, sewer and utility lines and nearby surface and drinking waters.

(F) Definitions beginning with the letter F.

1. "Facility closure" means an active dry cleaning facility that has ceased operations for sixty (60) continuous days.

2. "Free product" means a dry cleaning solvent that is present as a non-aqueous phase liquid (for example, pools of regulated substances at the surface or perched in the subsurface on top of an impermeable rock stratum or on top of groundwater).

3. "Fund" means the Dry-Cleaning Environmental Response Trust Fund created in section 260.920, RSMo.

(G) Definitions beginning with the letter G. *(Reserved)*

(H) Definitions beginning with the letter H. *(Reserved)*

(I) Definitions beginning with the letter I.

1. "Industrial laundry facility" means dry cleaners solely engaged in supplying laundered or dry-cleaned work uniforms, wiping towels, dust control items, etc. to industrial and commercial users.

(J) Definitions beginning with the letter J. *(Reserved)*

(K) Definitions beginning with the letter K. *(Reserved)*

(L) Definitions beginning with the letter L. *(Reserved)*

(M) Definitions beginning with the letter M.

1. "Multi-source site" means a site that contains contaminants from more than one (1) source or operation. (e.g., a dry cleaner in combination with a service station or auto part facility).

(N) Definitions beginning with the letter N.

1. "Non-chlorinated solvent" means any dry cleaning solvent that does not contain any compounds with the element chlorine (e.g., Stoddard Solvent, Pure Dry, Green Earth, DF2000, Rynex, etc.). A facility that uses carbon dioxide as the sole solvent in the cleaning of garments is exempt from this definition.

(O) Definitions beginning with the letter O.

1. "Operator" means any person who is or has been responsible for the operation of dry cleaning operations at a dry cleaning facility.

2. "Owner" means any person who owns the real property where a dry cleaning facility is or has operated.

(P) Definitions beginning with the letter P.

1. "Person" means an individual, trust, firm, joint venture, consortium, joint-stock company, corporation, partnership, association or limited liability company. Person does not include any governmental organization.

2. "Prioritization" means to arrange in order of importance for expenditures from the DERT Fund.

(Q) Definitions beginning with the letter Q. *(Reserved)*

(R) Definitions beginning with the letter R.

1. "Release" means any spill, leak, emission, discharge, escape, leak or disposal of dry cleaning solvent from a dry cleaning facility into the soils or waters of the state.

(S) Definitions beginning with the letter S. *(Reserved)*

(T) Definitions beginning with the letter T. *(Reserved)*

(U) Definitions beginning with the letter U. *(Reserved)*

(V) Definitions beginning with the letter V. *(Reserved)*

(W) Definitions beginning with the letter W. *(Reserved)*

(X) Definitions beginning with the letter X. *(Reserved)*

(Y) Definitions beginning with the letter Y. *(Reserved)*

(Z) Definitions beginning with the letter Z. *(Reserved)*

*AUTHORITY: sections 260.900 and 260.905, RSMo 2000. Original rule filed April 15, 2004.*

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

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

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this proposed rule and others beginning at 9:00 a.m. on June 16, 2004 at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any person wishing to speak at the hearing shall send a written request to the Secretary of the Hazardous Waste Management Commission at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written requests to speak must be postmarked by midnight on June 2, 2004. Faxed or e-mailed correspondence will not be accepted.*

*Any person may submit written comments on this proposed rule. Written comments shall be sent to the Director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written comments must be postmarked by midnight on June 25, 2004. Faxed or e-mailed correspondence will not be accepted.*

*Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program, at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.*

**Title 10—DEPARTMENT OF NATURAL RESOURCES  
Division 25—Hazardous Waste Management Commission  
Chapter 17—Dry-Cleaning Environmental Response  
Trust Fund**

**PROPOSED RULE**

**10 CSR 25-17.030 Registration and Surcharges**

*PURPOSE: This rules explains the requirements of registration of active dry cleaning facilities and the requirements of the solvent providers.*

(1) Every active dry cleaning facility shall pay, in addition to any other environmental response surcharges, an annual dry cleaning facility registration surcharge in accordance with 260.935, RSMo.

(A) The annual dry cleaner facility registration surcharge follows:

1. Five hundred dollars (\$500) for facilities which use no more than one hundred forty (140) gallons of chlorinated solvents and no more than one thousand four hundred (1,400) gallons of petroleum, non-chlorinated solvents per year;

2. One thousand dollars (\$1,000) for facilities which use more than one hundred forty (140) gallons of chlorinated solvents or more than one thousand four hundred (1,400) gallons of petroleum, non-chlorinated solvents per year and less than three hundred sixty (360) gallons of chlorinated solvents and less than three thousand six hundred (3,600) gallons of petroleum, non-chlorinated solvents per year; and

3. Fifteen hundred dollars (\$1,500) for facilities which use at least three hundred sixty (360) gallons of chlorinated solvents or at least three thousand six hundred (3,600) gallons of petroleum, non-chlorinated solvents per year.

(B) The annual dry cleaning facility registration surcharge is due on April 1 of each calendar year on a form provided by the department, on a reproduction of a form provided by the department, or a substitute version of a form approved by the department. The annual dry cleaning facility registration fee is determined based upon solvent use for the previous calendar year. Failure to keep registration current, may cause an active dry cleaning facility to be ineligible for the Dry-Cleaning Environmental Response Trust (DERT) Fund.

(C) If any person does not pay the annual dry cleaning facility registration surcharge in full within thirty (30) days from the date prescribed for such payment, the department shall impose and such person shall pay, in addition to the annual dry cleaning facility registration surcharge owed by such person, a penalty of fifteen percent (15%) and interest upon the unpaid amount at the rate of ten percent (10%) per annum from the date prescribed for payment of the annual dry cleaning registration surcharge and penalties until such payment is actually made. Such penalty and interest shall be deposited in the DERT Fund.

(2) Every seller or provider of dry cleaning solvent for use in this state shall pay, in addition to any other environmental response surcharges, a dry cleaning solvent surcharge on the sale or provision of dry cleaning solvent in accordance with 260.940, RSMo. The dry cleaning solvent surcharge required in this section shall be paid by the seller or provider on a quarterly basis and shall be paid to the department for the previous quarter. Quarterly reporting periods shall end on March 31, June 30, September 30, and December 31 of each calendar year. Quarterly reports and the accompanying surcharge payment shall be received by the department no later than thirty (30) days after the end of each reporting quarter.

(A) The amount of the dry cleaning solvent surcharge imposed by this section on each gallon of dry cleaning solvent shall be an amount equal to the product of the solvent factor for the dry cleaning solvent and the rate of eight dollars (\$8) per gallon.

1. The solvent factor for each dry cleaning solvent is as follows:

A. For perchloroethylene, the solvent factor is 1.00;

B. For 1,1,1-trichloroethane, the solvent factor is 1.00;

C. For other chlorinated dry cleaning solvents, the solvent factor is 1.00; and

D. For any non-chlorinated dry cleaning solvent, the solvent factor is 0.05.

(B) In the case of a fraction of a gallon, the dry cleaning solvent surcharge imposed by this section shall be the same fraction of the fee imposed on a whole gallon.

(C) Dry cleaning solvent surcharge reporting will be done on a form provided by the department, on a reproduction of a form provided by the department, or a substitute version of a form approved by the department. This form shall include a list of facilities that the solvent provider has provided solvents to and the type of solvent and amount delivered to each.

(D) The dry cleaning solvent surcharge required in this section shall be paid to the department by the seller or provider of the dry cleaning solvent, regardless of the location of such seller or provider.



(E) If any person does not pay the dry cleaning solvent surcharge in full on the date prescribed for such payment, the department shall impose and such person shall pay, in addition to the dry cleaning solvent surcharge owed by such person, a penalty of fifteen percent (15%) and interest upon the unpaid amount at the rate of ten percent (10%) per annum from the date prescribed for payment of the dry cleaning solvent surcharge and penalties until such payment is actually made. Such penalty and interest shall be deposited in the DERT Fund.

(F) An operator of a dry cleaning facility shall not purchase or obtain solvent from a seller or provider who does not pay the dry cleaning solvent charge, as provided in this rule. Any operator of a dry cleaning facility who fails to obey the provisions of this rule shall be required to pay the dry cleaning solvent surcharge for any dry cleaning solvent purchased or obtained from a seller or provider who fails to pay the proper dry cleaning solvent surcharge as determined by the department. Any operator of a dry cleaning facility who fails to follow the provisions of this subsection shall be charged a penalty of fifteen percent (15%) of the dry cleaning solvent surcharge owed and shall be responsible for payment of fifteen percent (15%) of the dry cleaning solvent surcharge owed and shall be responsible for payment of interest at the rate of ten percent (10%) per annum from the date prescribed for payment. If a seller or provider of dry cleaning solvent charges the operator of a dry cleaning facility the dry cleaning solvent surcharge provided for in this section when the solvent is purchased or obtained by the operator and the operator can prove that the operator made full payment of the surcharge to the seller or provider but the seller or provider fails to pay the surcharge to the department as required by this section, then the operator shall not be liable pursuant to this subsection for interest, penalties or the seller's or provider's unpaid surcharge.

(G) A solvent supplier shall not provide dry cleaning solvents to an active dry cleaning facility that has not paid its annual dry cleaning facility registration surcharge.

(3) The department will provide a receipt to each person that pays the annual dry cleaning facility registration surcharge and the dry cleaning solvent surcharge.

(4) An owner or operator of a facility will inform the department of the opening of a new dry cleaning facility on a form provided by the department within thirty (30) days of the start of operations.

(5) An owner or operator of an active dry cleaning facility will notify the department of a change in ownership of the facility on a form provided by the department within thirty (30) days after the change of ownership occurs.

*AUTHORITY: sections 260.905, 260.935 and 260.940, RSMo 2000. Original rule filed April 15, 2004.*

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

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

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this proposed rule and others beginning at 9:00 a.m. on June 16, 2004 at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any person wishing to speak at the hearing shall send a written request to the Secretary of the Hazardous Waste Management Commission at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written requests to speak must be postmarked by midnight on June 2, 2004. Faxed or e-mailed correspondence will not be accepted.*

*Any person may submit written comments on this proposed rule. Written comments shall be sent to the Director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written comments must be postmarked by midnight on June 25, 2004. Faxed or e-mailed correspondence will not be accepted.*

*Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program, at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.*

**Title 10—DEPARTMENT OF NATURAL RESOURCES  
Division 25—Hazardous Waste Management Commission  
Chapter 17—Dry-Cleaning Environmental Response  
Trust Fund**

**PROPOSED RULE**

**10 CSR 25-17.040 Reporting and Record Keeping**

*PURPOSE: This rule explains how the owner and operator of an active dry cleaning facility shall keep records demonstrating compliance with the requirements of this chapter. These records shall be furnished to the department on request. The rule establishes the reporting requirements to the General Assembly and the governor's office.*

(1) Owners and operators of an active dry cleaning facility shall cooperate fully with inspections, monitoring and testing conducted by the department, as well as requests for document submission, testing and monitoring by the department, in regards to a claim for the Dry-Cleaning Environmental Response Trust (DERT) Fund.

(2) Participants will provide copies of records or reports, within five (5) calendar working days upon receipt of a written request for such records, in regards to a claim for the DERT Fund. A written request shall be made by certified mail to the mailing address.

(3) The department will provide the General Assembly and the governor an annual report on the items listed in 260.955, RSMo at the beginning of November.

*AUTHORITY: sections 260.905 and 260.955, RSMo 2000. Original rule filed April 15, 2004.*

*PUBLIC COST: This proposed rule is estimated to cost state agencies and political subdivisions two thousand four hundred and eight dollars (\$2,408) in the aggregate of the estimated duration of the rule.*

*PRIVATE COST: This proposed rule is estimated to cost private entities six hundred fifty-nine thousand four hundred thirty dollars (\$659,430) in the aggregate of the estimated duration of the rule.*

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this proposed rule and others beginning at 9:00 a.m. on June 16, 2004 at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any person wishing to speak at the hearing shall send a written request to the Secretary of the Hazardous Waste Management Commission at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written requests to speak must be postmarked by midnight on June 2, 2004. Faxed or e-mailed correspondence will not be accepted.*

*Any person may submit written comments on this proposed rule. Written comments shall be sent to the Director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written comments must be postmarked by midnight on*

*June 25, 2004. Faxed or e-mailed correspondence will not be accepted.*

*Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program, at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.*

FISCAL NOTE  
PUBLIC ENTITY COST

I. RULE NUMBER

Title: Department of Natural Resources

Division: Hazardous Waste Management Commission

Chapter: Drycleaning Environmental Response Trust Fund

Type of Rulemaking: Proposed Rule

Rule Number and Name: 10 CSR 25-17.040 Reporting and Recordkeeping

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Number affected	Item	Estimated Cost of Compliance in the Aggregate
Missouri Department of Natural Resources	375 privately-owned facilities	Recordkeeping	\$ 2,408
		<b>Total public entity administrative cost</b>	<b>\$ 2,408</b>

III. WORKSHEET

1. Personnel costs for merit employees are calculated using the Market Rate step of the fiscal year 2004 merit schedule produced by the Missouri Commission on Management and Productivity (COMAP). Monthly salaries are multiplied by 12 to obtain an annual cost. The annual cost is multiplied by a factor of 31.8% with the additional amount added to the annual salary to account for fringe benefits. \$6,617 is added for expense and equipment costs. This sum is then multiplied by 26.4% and the additional amount added to account for indirect costs. Hourly costs are found by dividing the adjusted annual costs by 2080, the number of hours for a Full-Time Equivalent (FTE). All adjustment factors are based on current information confirmed by the hazardous waste program budget staff. Calculations for estimating the personnel costs of private entity employees are based on the same assumptions as for merit employees. Using this formula and the appropriate salaries, the following hourly rates are assumed to be the most accurate for purposes of this fiscal note:

Environmental Specialist IV hourly rate	—	\$ 41.75
Geologist II hourly rate	=	\$ 38.71
Environmental Specialist III hourly rate	=	\$ 36.63
Management Analysis Specialist I hourly rate	—	\$ 34.53
Administrative Office Support Assistant	—	\$ 25.69

- Based on the sites which are registered with the Missouri Department of Natural Resources, there are 375 active dry cleaning facilities in Missouri. These are all privately owned businesses. Governmental entities are excluded from this rule, therefore, the fiscal note includes only the costs associated with staff time to review and response time related to this rule.
- Recordkeeping. Department of Natural Resources administration costs. It is assumed that the Department of Natural Resources will incur costs necessary to administer this portion of the rule. These costs include the cost of the services of an Administrative Office Support Assistant responsible for receiving, reviewing and processing the registration

forms/reports received from the privately-owned active dry cleaning facilities. It is expected to take 0.25 hours per registration form/report to review and process this reported information.

Administrative Office Support Assistant salary = \$ 25.69 per hour

\$ 25.69 x 0.25 hours = \$ 6.42 to review one registration form/report

\$ 6.42 x 375 forms/reports reviewed by department = \$ 2,408

**Estimated annual cost to the department to review and process registration forms/reports = \$ 2,408.**

#### IV. ASSUMPTIONS

1. The total estimated cost is provided based on the number of active and abandoned facilities known to the department.
2. The universe of affected entities is based on the information provided by the Missouri Department of Natural Resources Fee's and Taxes database of current active dry cleaning facilities as of November 2003. It is assumed that the information provided represents a fair and accurate universe of active dry cleaning facilities proposed by this rule.
2. The division of entities into classifications is based on the premise that the costs required by this rule apply equally to all entities within each classification, except that the MISSOURI Department of Natural Resources will incur costs associated with administering the rule as well as costs associated with facility compliance.
3. Fiscal year 2004 dollars are used to estimate the costs.
4. Estimates assume a constant regulatory context, which requires no reporting standards beyond those currently required or imposed by this rulemaking.
5. Estimates assume there will be no new or sudden changes in technology, which would influence costs.
6. This fiscal note is not in lieu of the requirements or a model for compliance with this rule. The examples used for cost calculations are good faith estimates and averages using the department's professional judgement.
7. Affected entities are assumed to be in compliance with all applicable environmental laws and regulations.

FISCAL NOTE  
PRIVATE ENTITY COST

I. RULE NUMBER

Title: Department of Natural Resources

Division: Hazardous Waste Management Commission

Chapter: Drycleaning Environmental Response Trust Fund

Type of Rulemaking: Proposed Rule

Rule Number and Name: 10 CSR 25-17.040 Reporting and Recordkeeping

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule	Classification by types of the business entities which would likely be affected: *	Item	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
285	Small private owners	Recordkeeping	\$ 659,340
70	Medium private owners		
20	Large private owners		
		<b>Total compliance cost in the aggregate for private entities</b>	<b>\$ 659,340</b>

\* For the purpose of this rule types are classified as small, medium or large dry cleaning facilities based on the amount of solvents used in a calendar year.

III. WORKSHEET

1. Personnel costs for merit employees are calculated using the Market Rate step of the fiscal year 2004 merit schedule produced by the Missouri Commission on Management and Productivity (COMAP). Monthly salaries are multiplied by 12 to obtain an annual cost. The annual cost is multiplied by a factor of 31.8% with the additional amount added to the annual salary to account for fringe benefits. \$6,617 is added for expense and equipment costs. This sum is then multiplied by 26.4% and the additional amount added to account for indirect costs. Hourly costs are found by dividing the adjusted annual costs by 2080, the number of hours for a Full-Time Equivalent (FTE). All adjustment factors are based on current information confirmed by the hazardous waste program budget staff. Calculations for estimating the personnel costs of private entity employees are based on the same assumptions as for merit employees. Using this formula and the appropriate salaries, the following hourly rates are assumed to be the most accurate for purposes of this fiscal note:

Environmental Specialist IV hourly rate	=	\$ 41.75
Geologist II hourly rate	=	\$ 38.71
Environmental Specialist III hourly rate	=	\$ 36.63
Management Analysis Specialist I hourly rate	=	\$ 34.53
Administrative Office Support Assistant	=	\$ 25.69

- Based on the sites that are registered with the Missouri Department of Natural Resources, there are 375 active dry cleaning facilities in Missouri. These are all privately-owned businesses.
- Recordkeeping.** Owners and operators of active dry cleaning facilities should maintain a list and estimated quantity

of solvents on hand at the facility and the quantity of solvents purchased during the calendar year and whom the solvents were purchased from. Private entity costs for purposes of this fiscal note include the costs incurred by the private entity to comply with the requirements of the rule.

Private entity compliance costs: The cost for an owner or operator of an active dry cleaning facility to maintain records as required in this rule is estimated at an average of 4 hours per month. It is assumed that the recordkeeping will be performed by an individual equivalent to an Environmental Specialist III, with an appropriate hourly rate.

Environmental Specialist III hourly rate = \$ 36.63 per hour

\$ 36.63 x 4 hours = \$ 146.52 per month

\$146.52 x 12 months = \$1,758.24 estimated annual cost for recordkeeping per entity

Estimated cost x 285 (small facilities) = \$ 501,098

Estimated cost x 70 (medium facilities) = \$ 123,077

Estimated cost x 20 (large facilities) \$ 35,165

**Total cost of compliance for private entities = \$659,340**

#### IV. ASSUMPTIONS

1. The total estimated cost is provided based on the number of active and abandoned facilities known to the department.
2. The universe of affected entities is based on the information provided by the Missouri Department of Natural Resources Fee's and Taxes database of current active dry cleaning facilities as of November 2003. It is assumed that the information provided represents a fair and accurate universe of active dry cleaning facilities proposed by this rule.
3. The division of entities into classifications is based on the premise that the costs required by this rule apply equally to all entities within each classification, except that the Missouri Department of Natural Resources will incur costs associated with administering the rule as well as costs associated with facility compliance.
4. Fiscal year 2004 dollars are used to estimate the costs.
5. Estimates assume a constant regulatory context, which requires no reporting standards beyond those currently required or imposed by this rulemaking.
6. Estimates assume there will be no new or sudden changes in technology, which would influence costs.
7. This fiscal note is not in lieu of the requirements or a model for compliance with this rule. The examples used for cost calculations are good faith estimates and averages using the department's professional judgement.
8. Affected entities are assumed to be in compliance with all applicable environmental laws and regulations.

**Title 10—DEPARTMENT OF NATURAL RESOURCES  
Division 25—Hazardous Waste Management Commission  
Chapter 17—Dry-Cleaning Environmental Response  
Trust Fund**

**PROPOSED RULE**

**10 CSR 25-17.050 Reporting of Releases and Existing Contamination**

*PURPOSE:* This rule describes the steps for reporting and initial abatement of the spilling, leaking, emitting, discharging, escaping, leaching, or disposing of dry cleaning solvents onto the ground surface or into groundwater, surface water, or subsurface soil and the reporting of existing contamination at dry cleaner sites.

(1) Owners or operators of an active dry cleaning facility shall report to the department within twenty-four (24) hours of the discovery of a release of dry cleaning solvents from spills or leaks that result in a release to the environment that equals or exceeds its reportable quantity under Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA) (40 CFR 302.4) or for petroleum products listed in 260.500(6)(b), RSMo at the site or in the surrounding area. The reportable quantity for dry cleaning solvents not listed in Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA) (40 CFR 302.4) and for petroleum products listed in 260.500(6)(b), RSMo is one hundred (100) pounds. The National Response Center phone number is (800) 424-8802 and the department's Environmental Emergency Response phone number for reporting releases is (573) 634-2436.

(2) Owners or operators of an active dry cleaning facility shall contain and immediately clean up a release of dry cleaning solvents that is less than the reportable quantity. If cleanup cannot be accomplished within twenty-four (24) hours, owners or operators shall immediately notify the department.

(3) Owners or operators of an active or abandoned dry cleaning facility shall report to the department within twenty-four (24) hours of the discovery of existing contamination of dry cleaning solvents that is discovered in soils, groundwater, vapors, surface water, etc., that exceeds the departments cleanup guidelines.

(4) The department may require owners and operators to submit a report to the department summarizing the steps taken to clean up the release, within thirty (30) days after a reportable quantity release confirmation.

(5) If directed to do so by the department, owners or operators of an active or abandoned dry cleaning facility shall be required to follow the application procedures to the Dry-Cleaning Environmental Response Trust (DERT) Fund in accordance with 10 CSR 25-17.090 and conduct site characterization and corrective action in accordance with 10 CSR 25-17.080.

(6) The department may respond and conduct emergency response procedures to mitigate any emergency release to protect human health and the environment that if in the opinion of the department, the owner or operator has not satisfactorily responded to at an active or abandoned facility. The department may initiate procedures to recover the costs of these actions from the owner or operator.

(7) Failure to comply with 10 CSR 25-17.050 and failure to pay cost recovery as outlined in 10 CSR 25-17.050(7), may cause a dry cleaning facility to be ineligible for the DERT Fund.

*PUBLIC COST:* This proposed rule is estimated to cost state agencies and political subdivisions four thousand one hundred twenty-two dollars (\$4,122) in the aggregate of the estimated duration of the rule.

*PRIVATE COST:* This proposed rule is estimated to cost private entities four thousand one hundred twenty-two dollars (\$4,122) in the aggregate of the estimated duration of the rule.

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS:* The Missouri Hazardous Waste Management Commission will hold a public hearing on this proposed rule and others beginning at 9:00 a.m. on June 16, 2004 at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any person wishing to speak at the hearing shall send a written request to the Secretary of the Hazardous Waste Management Commission at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written requests to speak must be postmarked by midnight on June 2, 2004. Faxed or e-mailed correspondence will not be accepted.

Any person may submit written comments on this proposed rule. Written comments shall be sent to the Director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written comments must be postmarked by midnight on June 25, 2004. Faxed or e-mailed correspondence will not be accepted.

Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program, at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

*AUTHORITY:* sections 260.905 and 260.910, RSMo 2000. Original rule filed April 15, 2004.

**FISCAL NOTE  
PUBLIC ENTITY COST**

**I. RULE NUMBER**

Title: Department of Natural Resources

Division: Hazardous Waste Management Commission

Chapter: Drycleaning Environmental Response Trust Fund

Type of Rulemaking: Proposed Rule

Rule Number and Name: 10 CSR 25-17.050 Reporting of Releases and Existing Contamination

**II. SUMMARY OF FISCAL IMPACT**

Classification by types of the business entities which would likely be affected:	Number likely to be affected <sup>1</sup>	Item	Itemized Cost
Missouri Department of Natural Resources	50	Release Reporting	\$ 458
	400	Existing Contamination Reporting	\$ 3,664
		<b>Total administrative cost in the aggregate for public entities</b>	<b>\$ 4,122</b>

<sup>1</sup>All privately-owned active or abandoned dry cleaning facilities that use or used solvents to clean garments are potentially affected by this rule. As of November 2003, the Missouri Department of Natural Resources has approximately 375 privately-owned dry cleaning facilities registered in the Hazardous Waste Program Fees and Taxes database. Of this entire universe, it is assumed for the purpose of this fiscal note that only 50 privately-owned active dry cleaner facilities will have a reportable release within a year of the effective date of this rule. It is also assumed for the purpose of this fiscal note that only 400 privately-owned active or abandoned dry cleaner facilities will discover existing contamination within a year of the effective date of this rule. Public entities are excluded from this rule, therefore, the fiscal note includes only the costs associated with staff time to review and response time related to this rule.

**III. WORKSHEET**

1. Personnel costs for merit employees are calculated using the Market Rate step of the fiscal year 2004 merit schedule produced by the Missouri Commission on Management and Productivity (COMAP). Monthly salaries are multiplied by 12 to obtain an annual cost. The annual cost is multiplied by a factor of 31.8% with the additional amount added to the annual salary to account for fringe benefits. \$6,617 is added for expense and equipment costs. This sum is then multiplied by 26.4% and the additional amount added to account for indirect costs. Hourly costs are found by dividing the adjusted annual costs by 2080, the number of hours for a Full-Time Equivalent (FTE). All adjustment factors are based on current information confirmed by the hazardous waste program budget staff. Calculations for estimating the personnel costs of private entity employees are based on the same assumptions as for merit employees. Using this formula and the appropriate salaries, the following hourly rates are assumed to be the most accurate for purposes of this fiscal note:

Environmental Specialist IV hourly rate	=	\$ 41.75
Geologist II hourly rate	=	\$ 38.71



Environmental Specialist III hourly rate		\$ 36.63
Management Analysis Specialist I hourly rate	=	\$ 34.53
Administrative Office Support Assistant		\$ 25.69

2. The universe of affected entities is based upon the experience of staff of the Missouri Department of Natural Resources. Entities affected are active dry cleaning facilities having a reportable release or suspected release to the environment and active or abandoned dry cleaning facilities discovering existing contamination above department cleanup levels. Department staff assume that spills at active dry cleaning facilities will increase slightly due to the requirement in this rule to report releases or suspected releases and that existing contamination at active or abandoned dry cleaning facilities will increase slightly due to the requirement in this rule to report existing contamination. It is assumed that this information provides a fair and accurate estimate of the universe of active and abandoned dry cleaning facilities subject to the requirements of this rule.
3. **Reporting releases and suspected releases.** All releases greater than the reportable quantities for the solvent used that are not immediately contained and cleaned up are required to be reported to the department's Environmental Emergency Response line. It is assumed that all releases will be greater than the reportable quantity, and therefore required to be reported to the department. The total estimated cost attributed to the requirement to report releases or suspected releases is calculated based upon department records which indicate that the department can expect a reportable release from approximately 50 facilities per year. It is assumed that of these 50 facilities, 38 will be required to implement Initial Release Response Measures. Public entity costs for purposes of this fiscal note include the costs incurred by the Department of Natural Resources to administer this portion of the rule (administration costs)

Department of Natural Resources administration costs. It is assumed that the Department of Natural Resources will incur costs necessary to administer this portion of the rule. These costs include the cost of the services of an Environmental Specialist III responsible for receiving and documenting the phone call that notifies the department of the release or suspected release. It is expected to take 0.25 hours to receive and document the call. The department estimates that approximately 50 active dry cleaner sites will be required to call the Environmental Emergency Response line, for a total of 400 calls received and processed.

Environmental Specialist III hourly rate - \$ 36.63 per hour

\$ 36.63 x .25 hour = \$ 9.16 per phone call

\$ 9.16 x 50 calls processed by department = \$ 458

**Estimated annual cost to the department to process telephone calls reporting a release or suspected release from a privately-owned active dry cleaning facility = \$458.**

**Annual administration cost to administer the Initial Release Response Measures requirement = \$ 1,392.**

4. **Reporting existing contamination at dry cleaner sites.** All contamination in excess of the department's cleanup levels is required to be reported to the department's Environmental Emergency Response line. Public entity costs for purposes of this fiscal note include the costs incurred by the Department of Natural Resources to administer this portion of the rule (administration costs).

Department of Natural Resources administration costs. It is assumed that the Department of Natural Resources will incur costs necessary to administer this portion of the rule. These costs include the cost of the services of an Environmental Specialist III responsible for receiving and documenting the phone call that notifies the department of the release or suspected release. It is expected to take 0.25 hours to receive and document the call. The department estimates that approximately 400 dry cleaner sites will be required to call the Environmental Emergency Response line, for a total of 400 calls received and processed.

Environmental Specialist III hourly rate - \$ 36.63 per hour

$\$ 36.63 \times .25 \text{ hour} = \$ 9.16 \text{ per phone call}$

$\$ 9.16 \times 400 \text{ calls processed by department} = \$ 3,664$

**Estimated annual cost to the department to process telephone calls reporting a release or suspected release from a privately-owned active or abandoned dry cleaning facility = \$3,664.**

#### IV. ASSUMPTIONS

1. The total estimated cost is provided based on the number of active and abandoned facilities known to the department.
2. Fiscal year 2004 dollars are used to estimate the costs.
3. Estimates assume a constant regulatory context, which requires no reporting standards beyond those currently required or imposed by this rulemaking.
4. Estimates assume there will be no new or sudden changes in technology, which would influence costs.
5. This fiscal note is not in lieu of the requirements or a model for compliance with this rule. The examples used for cost calculations are good faith estimates and averages using the department's professional judgement.
6. Affected entities are assumed to be in compliance with all applicable environmental laws and regulations.

FISCAL NOTE  
PRIVATE ENTITY COST

I. RULE NUMBER

Title: Department of Natural Resources

Division: Hazardous Waste Management Commission

Chapter: Drycleaning Environmental Response Trust Fund

Type of Rulemaking: Proposed Rule

Rule Number and Name: 10 CSR 25-17.050 Reporting of Releases and Existing Contamination

II. SUMMARY OF FISCAL IMPACT

Classification by types of the business entities which would likely be affected:	Number likely to be affected <sup>1</sup>	Item	Itemized Cost
Privately-owned active dry cleaning facilities having a release or suspected release of dry cleaning solvents to the environment.	50	Release Reporting	\$ 458
Privately-owned active and abandoned dry cleaning facilities discovering existing contamination.	400	Existing Contamination Reporting	\$ 3,664
		<b>Total compliance cost in the aggregate for private entities</b>	<b>\$ 4,122</b>

<sup>1</sup>All privately-owned active or abandoned dry cleaning facilities that use or used solvents to clean garments are potentially affected by this rule. As of November 2003, the Missouri Department of Natural Resources has approximately 375 privately-owned dry cleaning facilities registered in the Hazardous Waste Program's Fees and Taxes databases. Of this entire universe, it is assumed for the purpose of this fiscal note that only 50 privately-owned active dry cleaner facilities will have a reportable release within a year of the effective date of this rule. It is also assumed for the purpose of this fiscal note that only 400 privately-owned active and abandoned dry cleaner facilities will discover existing contamination within a year of the effective date of this rule.

III. WORKSHEET

- Personnel costs for merit employees are calculated using the Market Rate step of the fiscal year 2004 merit schedule produced by the Missouri Commission on Management and Productivity (COMAP). Monthly salaries are multiplied by 12 to obtain an annual cost. The annual cost is multiplied by a factor of 31.8% with the additional amount added to the annual salary to account for fringe benefits. \$6,617 is added for expense and equipment costs. This sum is then multiplied by 26.4% and the additional amount added to account for indirect costs. Hourly costs are found by dividing the adjusted annual costs by 2080, the number of hours for a Full-Time Equivalent (FTE). All adjustment factors are based on current information confirmed by the hazardous waste program budget staff. Calculations for estimating the personnel costs of private entity employees are based on the same assumptions as for merit employees. Using this formula and the appropriate salaries, the following hourly rates are assumed to be the most accurate for purposes of this fiscal note:

Environmental Specialist IV hourly rate	=	\$ 41.75
Geologist II hourly rate	="	\$ 38.71
Environmental Specialist III hourly rate	=	\$ 36.63
Management Analysis Specialist I hourly rate	="	\$ 34.53
Administrative Office Support Assistant	=	\$ 25.69

- The owner or operator of an active and the owner or operator of an abandoned dry cleaning facility shall be liable for the first twenty-five thousand dollars of corrective action costs incurred because of a release from an active or abandoned dry cleaning facility. This 25,000 deductible amount is required by RSMo, Section 260.925. Although this deductible amount is required by the statute, it is being listed in the summary of fiscal impact section as a private entity cost.
- The universe of affected entities is based upon the experience of staff of the Missouri Department of Natural Resources. Entities affected are active dry cleaning facilities having a reportable release or suspected release to the environment and active or abandoned dry cleaning facilities discovering existing contamination above department cleanup levels. Department staff assume that spills at active dry cleaning facilities will increase slightly due to the requirement in this rule to report releases or suspected releases and that existing contamination at active or abandoned dry cleaning facilities will increase slightly due to the requirement in this rule to report existing contamination. It is assumed that this information provides a fair and accurate estimate of the universe of active and abandoned dry cleaning facilities subject to the requirements of this rule.
- Reporting releases and suspected releases.** All releases greater than the reportable quantities for the solvent used that are not immediately contained and cleaned up are required to be reported to the department's Environmental Emergency Response line. It is assumed that all releases will be greater than the reportable quantity, and therefore required to be reported to the department. The total estimated cost attributed to the requirement to report releases or suspected releases is calculated based upon department records which indicate that the department can expect a reportable release from approximately 50 facilities per year. Private entity costs for purposes of this fiscal note include the costs incurred by the affected private entity to comply with the requirements of the rule. The administration costs of the department to process and document the phone call are counted in the public entity fiscal note for the same rule.

Private entity compliance costs. The cost for a regulated private entity to report a release to the Missouri Department of Natural Resource's Environmental Emergency Response line is estimated at an average of 0.25 hours per phone call. It is assumed that the phone call will be placed by an individual equivalent to an Environmental Specialist III, with an appropriate hourly rate.

Environmental Specialist III hourly rate = \$ 36.63 per hour

\$ 36.63 x 0.25 = \$ 9.16 estimated cost to report one release to the department's Environmental Emergency Response line

\$ 9.16 x 50 number of reportable releases from regulated private entities = \$ 458

**Total cost of compliance for private entities = \$ 458**

- Reporting existing contamination at dry cleaner sites.** All contamination in excess of the department's cleanup levels is required to be reported to the department's Environmental Emergency Response line. Private entity costs for purposes of this fiscal note include the costs incurred by the affected private entity to comply with the requirements of the rule. The administration costs of the department to process and document the phone call are counted in the public entity fiscal note for the same rule.

Private entity compliance costs. The cost for a regulated private entity to report existing contamination to the Missouri Department of Natural Resource's Environmental Emergency Response line is estimated at an average of

0.25 hours per phone call. It is assumed that the phone call will be placed by an individual equivalent to an Environmental Specialist III, with an appropriate hourly rate.

Environmental Specialist III hourly rate = \$ 36.63 per hour

$\$ 36.63 \times 0.25 = \$9.16$  estimated cost to report one release to the department's Environmental Emergency Response line

$\$ 9.16 \times 400$  sites with existing contamination = \$ 3,664

**Total compliance cost for private entities to report existing contamination = \$ 3,664**

#### IV. ASSUMPTIONS

1. The total estimated cost is provided based on the number of active and abandoned facilities known to the department.
2. The department has no previous dry cleaner cleanup costs documented, therefore, our cost estimates are based on research of cleanups of dry cleaning facilities conducted in states bordering Missouri.
3. Estimates assume a constant regulatory context, which requires no reporting standards beyond those currently required or imposed by this rulemaking.
4. Estimates assume there will be no new or sudden changes in technology, which would influence costs.
5. This fiscal note is not in lieu of the requirements or a model for compliance with this rule. The examples used for cost calculations are good faith estimates and averages using the department's professional judgement.
6. Affected entities are assumed to be in compliance with all applicable environmental laws and regulations.
7. A 25,000 deductible amount is required by RSMo, Section 260.925. Although this deductible amount is required by the statute, it is being listed in the summary of fiscal impact section as a private entity cost.
8. Money expended for cleanups by the Drycleaning Environmental Response Trust Fund above the \$25,000 deductible is not being included in the public entity fiscal note since this is not a cost to the state. Money in the Drycleaning Environmental Response Trust Fund has been paid by the dry cleaner facilities through their annual registration fees and surcharges.
9. The Drycleaning Environmental Response Trust Fund is not liable for the payment of costs in excess of one million dollars at any one contaminated dry cleaning site, as stated in RSMo, Section 260.920.

**Title 10—DEPARTMENT OF NATURAL RESOURCES  
Division 25—Hazardous Waste Management Commission  
Chapter 17—Dry-Cleaning Environmental Response  
Trust Fund**

**PROPOSED RULE**

**10 CSR 25-17.060 Site Prioritization and Completion**

*PURPOSE: This rule describes the requirements for the prioritization of sites and for determining the completion of cleanup of sites.*

(1) The department shall prioritize the order in which to use funds from the Dry-Cleaning Environmental Response Trust (DERT) Fund using standardized site assessment prioritization criteria. The criteria shall include but may not be limited to:

- (A) Risk to human health or the environment;
- (B) The present and future use of the affected property, ground-water, or surface water;
- (C) The effect that interim remedial measures have on the site;
- (D) The benefit of corrective action compared to the cost of corrective action; and
- (E) Other factors that the director deems relevant, which include but are not limited to:

1. Whether a public water supply well or one (1) or more domestic drinking water wells are contaminated or threatened with levels above state or federal drinking water limits, and no alternative source is readily available;

2. Whether a surface water intake is contaminated or threatened with levels above state or federal drinking water limits, and no alternative source is readily available; and

3. Whether a high probability exists for direct human exposure to contaminated media.

(2) The department shall determine whether the proposed level of corrective action is sufficient by using the following criteria, which include but are not limited to:

- (A) The characteristics of the contaminated dry cleaning facility;
- (B) Cleanup standards and procedures developed by the department in guidance documents or other state and federal regulations; and
- (C) Any other factors which the department considers relevant may be used in determining the level at which corrective action is deemed completed.

*AUTHORITY: section 260.905, RSMo 2000. Original rule filed April 15, 2004.*

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

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

**NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS:** The Missouri Hazardous Waste Management Commission will hold a public hearing on this proposed rule and others beginning at 9:00 a.m. on June 16, 2004 at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any person wishing to speak at the hearing shall send a written request to the Secretary of the Hazardous Waste Management Commission at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written requests to speak must be postmarked by midnight on June 2, 2004. Faxed or e-mailed correspondence will not be accepted.

Any person may submit written comments on this proposed rule. Written comments shall be sent to the Director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. To

be accepted, written comments must be postmarked by midnight on June 25, 2004. Faxed or e-mailed correspondence will not be accepted.

Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program, at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

**Title 10—DEPARTMENT OF NATURAL RESOURCES  
Division 25—Hazardous Waste Management Commission  
Chapter 17—Dry-Cleaning Environmental Response  
Trust Fund**

**PROPOSED RULE**

**10 CSR 25-17.070 Closure of Facilities**

*PURPOSE: This rule describes the requirements for the permanent closure of active dry cleaning facilities.*

(1) An owner or operator of an active dry cleaner facility will notify the department sixty (60) days after facility closure on a form provided by the department.

(2) Each owner or operator of an active dry cleaner facility which has ceased operation for sixty (60) continuous days shall remove all dry cleaning solvents and dry cleaning wastes from the facility no later than ninety (90) days after the last day of operation.

(A) Each owner or operator shall dispose of all dry cleaning waste in accordance with 10 CSR 25-4.261.

(B) An owner or operator may request a written extension of the sixty (60)-day time limit. This written extension will include a brief description of the reason for the extension, list of the type and quantity of solvents stored on site, and a plan for inspections of the facility.

(3) To ensure eligibility in the Dry-Cleaning Environmental Response Trust (DERT) Fund, the owner or operator of the closed facility should immediately measure for contamination in areas where a release of dry cleaner solvents is most likely to occur.

*AUTHORITY: section 260.905, RSMo 2000. Original rule filed April 15, 2004.*

*PUBLIC COST: This proposed rule is estimated to cost state agencies and political subdivisions two thousand seven hundred eighty-four dollars (\$2,784) in the aggregate of the estimated duration of the rule.*

*PRIVATE COST: This proposed rule is estimated to cost private entities one hundred twenty-four thousand eight hundred fourteen dollars (\$124,814) in the aggregate of the estimated duration of the rule.*

**NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS:** The Missouri Hazardous Waste Management Commission will hold a public hearing on this proposed rule and others beginning at 9:00 a.m. on June 16, 2004 at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any person wishing to speak at the hearing shall send a written request to the Secretary of the Hazardous Waste Management Commission at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written requests to speak must be postmarked by midnight on June 2, 2004. Faxed or e-mailed correspondence will not be accepted.

Any person may submit written comments on this proposed rule. Written comments shall be sent to the Director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written comments must be postmarked by midnight on

*June 25, 2004. Faxed or e-mailed correspondence will not be accepted.*

*Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program, at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.*

**FISCAL NOTE  
PUBLIC ENTITY COST**

**I. RULE NUMBER**Title: Department of Natural ResourcesDivision: Hazardous Waste Management CommissionChapter: Drycleaning Environmental Response Trust FundType of Rulemaking: Proposed RuleRule Number and Name: 10 CSR 25-17.070 Closure of Facilities**II. SUMMARY OF FISCAL IMPACT**

Affected Agency or Political Subdivision	Number likely to be affected <sup>1</sup>	Item	Itemized Cost
Missouri Department of Natural Resources	19	Closure notice and site check plan and report review	\$ 2,784
		<b>Total public entity administrative cost</b>	<b>\$ 2,784</b>

<sup>1</sup>All privately-owned active dry cleaning facilities that used solvents to clean garments are potentially affected by this rule. As of November 2003, the Missouri Department of Natural Resources has approximately 375 privately-owned dry cleaning facilities registered in the Hazardous Waste Program Fees and Taxes database. Of this entire universe, it is assumed for the purpose of this fiscal note that only 19 privately-owned active dry cleaner facilities will permanently close the facility and measure for contamination within a year of the effective date of this rule. Public entities are excluded from this rule, therefore, the fiscal note includes only the costs associated with staff time to review and response time related to this rule.

**III. WORKSHEET**

- Personnel costs for merit employees are calculated using the Market Rate step of the fiscal year 2004 merit schedule produced by the Missouri Commission on Management and Productivity (COMAP). Monthly salaries are multiplied by 12 to obtain an annual cost. The annual cost is multiplied by a factor of 31.8% with the additional amount added to the annual salary to account for fringe benefits. \$6,617 is added for expense and equipment costs. This sum is then multiplied by 26.4% and the additional amount added to account for indirect costs. Hourly costs are found by dividing the adjusted annual costs by 2080, the number of hours for a Full-Time Equivalent (FTE). All adjustment factors are based on current information confirmed by the hazardous waste program budget staff. Calculations for estimating the personnel costs of private entity employees are based on the same assumptions as for merit employees. Using this formula and the appropriate salaries, the following hourly rates are assumed to be the most accurate for purposes of this fiscal note:

Environmental Specialist IV hourly rate	=	\$ 41.75
Geologist II hourly rate	=	\$ 38.71



Environmental Specialist III hourly rate	=	\$ 36.63
Management Analysis Specialist I hourly rate	=	\$ 34.53
Administrative Office Support Assistant	=	\$ 25.69

2. Based upon the experience of department staff, it is assumed that 5% or 19 of the 375 privately-owned active dry cleaning facilities should conduct a site check to determine the extent of the release. Based on this assumption, the department assumes 19 privately-owned active and abandoned dry cleaning facilities should conduct a site check and submit a report to the department.
3. Department of Natural Resources review costs. It is assumed that the Department of Natural Resources will incur costs necessary to administer this portion of the rule. These costs include the cost of the receipt of the closure notice and the review of site check plans and reports by an Environmental Specialist III. It is expected to take 4 hours to review and respond to these documents. The department estimates that approximately 19 privately-owned active and abandoned dry cleaning facilities should conduct a site check and submit a report to the department.

Environmental Specialist III hourly rate = \$ 36.63 per hour

\$ 36.63 x 4 hours = \$ 146.52

\$ 146.52 x 19 closure notices and site check plans and reports reviewed by department = \$ 2,783.88

**Total estimated annual cost to the department to receive closure notices and review site check plans and reports received from privately-owned active dry cleaning facilities = \$ 2,784.00**

#### IV. ASSUMPTIONS

1. The total estimated cost is provided based on the number of active and abandoned facilities known to the department.
2. The universe of affected entities is based upon the experience of staff of the Missouri Department of Natural Resources. Entities affected are active and abandoned dry cleaning facilities that used solvents to clean garments and having a reportable release or suspected release to the environment. Department staff assume that spill reports at dry cleaning facilities will increase due to the requirement in this rule to report releases or suspected releases. It is assumed that this information provides a fair and accurate estimate of the universe of active and abandoned dry cleaner facilities subject to the requirements of this rule.
3. Fiscal year 2004 dollars are used to estimate the costs.
4. Estimates assume a constant regulatory context, which requires no reporting standards beyond those currently required or imposed by this rulemaking.
5. Estimates assume there will be no new or sudden changes in technology, which would influence costs.
6. This fiscal note is not in lieu of the requirements or a model for compliance with this rule. The examples used for cost calculations are good faith estimates and averages using the department's professional judgement.
7. Affected entities are assumed to be in compliance with all applicable environmental laws and regulations.

**FISCAL NOTE  
PRIVATE ENTITY COST**

**I. RULE NUMBER**Title: Department of Natural ResourcesDivision: Hazardous Waste Management CommissionChapter: Drycleaning Environmental Response Trust FundType of Rulemaking: Proposed RuleRule Number and Name: 10 CSR 25-17.070 Closure of Facilities**II. SUMMARY OF FISCAL IMPACT**

Classification by types of the business entities which would likely be affected:	Number likely to be affected <sup>1</sup>	Item	Itemized Cost
Privately-owned dry cleaning facilities storing solvents for cleaning garments that close operations should measure for contamination	19	Closure notice preparation and submittal	\$ 174
	19	Site check	\$ 124,640
		<b>Total private entity compliance cost</b>	<b>\$ 124,814</b>

<sup>1</sup>All privately-owned active dry cleaning facilities that used solvents to clean garments are potentially affected by this rule. As of November 2003, the Missouri Department of Natural Resources has approximately 375 privately-owned dry cleaning facilities registered in their databases. Of this entire universe, it is assumed for the purpose of this fiscal note that only 19 privately-owned active dry cleaner facilities will permanently close the facility and measure for contamination within a year of the effective date of this rule.

**III. WORKSHEET**

- Personnel costs for merit employees are calculated using the Market Rate step of the fiscal year 2004 merit schedule produced by the Missouri Commission on Management and Productivity (COMAP). Monthly salaries are multiplied by 12 to obtain an annual cost. The annual cost is multiplied by a factor of 31.8% with the additional amount added to the annual salary to account for fringe benefits. \$6,617 is added for expense and equipment costs. This sum is then multiplied by 26.4% and the additional amount added to account for indirect costs. Hourly costs are found by dividing the adjusted annual costs by 2080, the number of hours for a Full-Time Equivalent (FTE). All adjustment factors are based on current information confirmed by the hazardous waste program budget staff. Calculations for estimating the personnel costs of private entity employees are based on the same assumptions as for merit employees. Using this formula and the appropriate salaries, the following hourly rates are assumed to be the most accurate for purposes of this fiscal note:

Environmental Specialist IV hourly rate	-	\$ 41.75
Geologist II hourly rate	-	\$ 38.71
Environmental Specialist III hourly rate	-	\$ 36.63
Management Analysis Specialist I hourly rate	-	\$ 34.53
Administrative Office Support Assistant	-	\$ 25.69

2. Based upon the experience of department staff, it is assumed that 5% or 19 of the 375 privately-owned active dry cleaning facilities will notify the department of their facility closure and should conduct a site check to determine the extent of the release. Based on this assumption, the department assumes 19 privately-owned active and abandoned dry cleaning facilities will submit closure notices and should conduct a site check and submit a report to the department.

3. **Closure notice costs.** As noted in the assumption above, the department assumes that 19 of the 375 privately-owned active dry cleaning facilities will be preparing and submitting the closure notice form. Private entity costs for purposes of this fiscal note include the costs incurred by the private entity to comply with the requirements of the rule.

Private entity compliance costs: The cost for an owner or operator of an active dry cleaning facility to complete and submit the closure notice form as required in this rule is estimated at an average of .25 hours. It is assumed that the closure notice preparation and submittal will be performed by an individual equivalent to an Environmental Specialist III, with an appropriate hourly rate.

Environmental Specialist III hourly rate – \$ 36.63 per hour

\$ 36.63 x .25 hours = \$ 9.16 estimated cost for closure notice preparation and submittal

\$ 9.16 x 19 facilities = \$ 174.04

**Total closure notice preparation and submittal cost for private entities = \$ 174**

4. **Site check costs.** As noted in the assumption above, the department assumes that 19 of the 375 active privately-owned dry cleaner facilities should conduct a site check and submit a report. Based on research of cleanups of dry cleaning facilities conducted in other states, the estimated cost to complete a site check and prepare and submit a report is \$ 6,560, as follows:

Project manager – \$ 95 per hour x 8 hours	-	\$ 760
Other labor – .25 per hour x 8 hours	=	\$ 200
Drilling equipment – \$ 1,700 x 1 day		\$ 1,700
Monitoring well installation – \$ 500 x 1 well	=	\$ 500
Sampling analysis – \$ 600 per sample x 4 samples		\$ 2,400
Final report – \$ 1,000 per report x 1	=	\$ 1,000

**Total site check costs = \$ 6,560**

**\$ 6,560 x 19 privately-owned active and abandoned dry cleaner facilities = \$ 124,640**

**Total private entity compliance cost for requirement to conduct a site check = \$ 124,640**

#### IV. ASSUMPTIONS

1. The total estimated cost is provided based on the number of active and abandoned facilities known to the department.
2. The universe of affected entities is based upon the experience of staff of the Missouri Department of Natural Resources. Entities affected are active and abandoned dry cleaning facilities that used solvents to clean garments and

having a reportable release or suspected release to the environment. Department staff assume that spill reports at dry cleaning facilities will increase due to the requirement in this rule to report releases or suspected releases. It is assumed that this information provides a fair and accurate estimate of the universe of active and abandoned dry cleaner facilities subject to the requirements of this rule.

3. The department does not have previous cleanup costs documented for dry cleaning sites, therefore, our cost estimates are based on research of cleanups of dry cleaning facilities conducted in states bordering Missouri.
4. Estimates assume a constant regulatory context, which requires no reporting standards beyond those currently required or imposed by this rulemaking.
5. Estimates assume there will be no new or sudden changes in technology, which would influence costs.
6. This fiscal note is not in lieu of the requirements or a model for compliance with this rule. The examples used for cost calculations are good faith estimates and averages using the department's professional judgement.
7. Affected entities are assumed to be in compliance with all applicable environmental laws and regulations.

**Title 10—DEPARTMENT OF NATURAL RESOURCES  
Division 25—Hazardous Waste Management Commission  
Chapter 17—Dry-Cleaning Environmental Response  
Trust Fund**

**PROPOSED RULE**

**10 CSR 25-17.080 Site Characterization and Corrective Action**

*PURPOSE:* This rule describes the steps for the assessment, investigation, and corrective action of contamination of dry cleaning solvents.

(1) Owners or operators shall conduct assessments, investigations, and corrective actions of contamination and shall do so in accordance with risk-based guidance developed by the department.

(2) When required by the department, owners or operators of active or abandoned dry cleaning facilities shall conduct investigations to determine if the active or abandoned dry cleaning facility is the source of off-site impacts. These impacts include, but are not limited to, the discovery of dry cleaning solvents, the presence of dense non-aqueous phased liquid (DNAPL)/free product or vapors in soils, basements, sewer and utility lines and nearby surface and drinking waters that have been observed by the department or brought to its attention by another party.

(3) The department will approve the work plan only after ensuring that implementation of the plan will adequately protect human health, safety and the environment.

(4) Upon approval of the corrective action plan, the owner or operator shall implement the plan including modifications to the plan made by the department. Owners and operators shall monitor, evaluate and report the results of implementing the plan in accordance with a schedule and in a format established by the department.

*AUTHORITY:* section 260.905, RSMo 2000. Original rule filed April 15, 2004.

*PUBLIC COST:* This proposed rule is estimated to cost state agencies and political subdivisions four hundred twenty-seven thousand nine hundred sixty-eight dollars (\$427,968) in the aggregate of the estimated duration of the rule.

*PRIVATE COST:* This proposed rule is estimated to cost private entities \$79,000,000 in the aggregate of the estimated duration of the rule.

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS:* The Missouri Hazardous Waste Management Commission will hold a public hearing on this proposed rule and others beginning at 9:00 a.m. on June 16, 2004 at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any person wishing to speak at the hearing shall send a written request to the Secretary of the Hazardous Waste Management Commission at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written requests to speak must be postmarked by midnight on June 2, 2004. Faxed or e-mailed correspondence will not be accepted.

Any person may submit written comments on this proposed rule. Written comments shall be sent to the Director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written comments must be postmarked by midnight on June 25, 2004. Faxed or e-mailed correspondence will not be accepted.

Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program, at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

**FISCAL NOTE  
PUBLIC ENTITY COST**

**I. RULE NUMBER**

Title: Department of Natural Resources

Division: Hazardous Waste Management Commission

Chapter: Drycleaning Environmental Response Trust Fund

Type of Rulemaking: Proposed Rule

Rule Number and Name: 10 CSR 25-17.080 Site Characterization and Corrective Action

**II. SUMMARY OF FISCAL IMPACT**

Affected Agency or Political Subdivision	Number likely to be affected <sup>1</sup>	Item	Itemized Cost
Missouri Department of Natural Resources	400	Site Characterization work plan and report review	\$ 237,760
	320	Corrective Action Plan work plan and report review	\$ 190,208
		<b>Total public entity administrative cost</b>	<b>\$ 427,968</b>

<sup>1</sup>All privately-owned active and abandoned dry cleaning facilities that used solvents to clean garments are potentially affected by this rule. As of November 2003, the Missouri Department of Natural Resources has approximately 375 privately-owned dry cleaning facilities registered in the Hazardous Waste Fees and Taxes database. There are 125 abandoned sites known to exist. Of this entire universe, it is assumed for the purpose of this fiscal note that only 400 privately-owned active and abandoned dry cleaner facilities will have a reportable release and subsequently be required to implement a Site Characterization Plan and Report within a year of the effective date of this rule. It is also assumed for the purpose of this fiscal note that only 320 privately-owned active and abandoned dry cleaner facilities will be required to implement a Corrective Action Plan within a year of the effective date of this rule. Public entities are excluded from this rule, therefore, the fiscal note includes only the costs associated with staff time to review and response time related to this rule.

**III. WORKSHEET**

1. Personnel costs for merit employees are calculated using the Market Rate step of the fiscal year 2004 merit schedule produced by the Missouri Commission on Management and Productivity (COMAP). Monthly salaries are multiplied by 12 to obtain an annual cost. The annual cost is multiplied by a factor of 31.8% with the additional amount added to the annual salary to account for fringe benefits. \$6,617 is added for expense and equipment costs. This sum is then multiplied by 26.4% and the additional amount added to account for indirect costs. Hourly costs are found by dividing the adjusted annual costs by 2080, the number of hours for a Full-Time Equivalent (FTE). All adjustment factors are based on current information confirmed by the hazardous waste program budget staff. Calculations for estimating the personnel costs of private entity employees are based on the same assumptions as for merit employees. Using this formula and the appropriate salaries, the following hourly rates are assumed to be the most accurate for

purposes of this fiscal note:

Environmental Specialist IV hourly rate	=	\$ 41.75
Geologist II hourly rate	=	\$ 38.71
Environmental Specialist III hourly rate	=	\$ 36.63
Management Analysis Specialist I hourly rate	=	\$ 34.53
Administrative Office Support Assistant	=	\$ 25.69

- Based upon the experience of department staff, it is assumed that 80% or 400 of the 500 privately-owned active and abandoned dry cleaning facilities will have a reportable release and subsequently be required to implement a Site Characterization Plan and Report.
- Based upon the experience of department staff, it is assumed that 80% or 320 of the 400 privately-owned active and abandoned dry cleaning facilities required to conduct a site characterization to determine the extent of the release will also be required to prepare and implement a Corrective Action Plan.
- Staff time for review of site characterization reports.** Based on task/time correlation, the department estimates it will take an environmental specialist III 12 hours to receive, analyze, and respond to the site characterization report submitted by private entities in compliance with this rule. The private entity compliance costs are counted in the private entity fiscal note.

Environmental Specialist III salary	=	\$ 36.63 per hour
\$ 36.63 x 12 hours	=	\$ 439.56 per report
\$ 439.56 x 400 site characterization reports submitted	=	\$ 175,824
Geologist II salary	=	\$ 38.71 per hour
\$ 38.71 x 4 hours	=	\$ 154.84 per report
\$ 154.84 x 400 site characterization reports submitted	=	\$ 61,936

\$175,824 (Environmental Specialist III costs) + \$ 61,936 (Geologist II costs) = \$ 237,760.

**Total cost to the department to receive, analyze, and respond to site characterization reports submitted in compliance with this rule = \$ 237,760.**

- Staff time for review of correction action plans.** Based on task/time correlation, the department estimates it will take an environmental specialist III 12 hours to receive, analyze, and respond to the corrective action plan and a geologist II four hours to review the corrective action plan submitted in compliance with this rule, submitted by a private entity. The private entity compliance costs are counted in the private entity fiscal note.

Environmental Specialist III salary	=	\$ 36.63 per hour
\$ 36.63 x 12 hours	=	\$ 439.56
\$439.56 x 320 submittals	=	\$ 140,659
Geologist II salary	=	\$ 38.71 per hour
\$ 38.71 x 4 hours	=	\$ 154.84
\$ 154.84 x 320 submittals	=	\$ 49,549

\$140,659 (Environmental Specialist III costs) + \$49,549 (Geologist II costs) = \$ 190,208.

**Total cost to Missouri Department of Natural Resources to receive, review, analyze, and respond to corrective action plans submitted in compliance with this rule = \$ 190,208.**

#### IV. ASSUMPTIONS

1. The total estimated cost is provided based on the number of active and abandoned facilities known to the department.
2. The universe of affected entities is based upon the experience of staff of the Missouri Department of Natural Resources. Entities affected are active and abandoned dry cleaning facilities that used solvents to clean garments and having a reportable release or suspected release to the environment. Department staff assume that spill reports at dry cleaning facilities will increase due to the requirement in this rule to report releases or suspected releases. It is assumed that this information provides a fair and accurate estimate of the universe of active and abandoned dry cleaner facilities subject to the requirements of this rule.
3. Fiscal year 2004 dollars are used to estimate the costs.
4. Estimates assume a constant regulatory context, which requires no reporting standards beyond those currently required or imposed by this rulemaking.
5. Estimates assume there will be no new or sudden changes in technology, which would influence costs.
6. This fiscal note is not in lieu of the requirements or a model for compliance with this rule. The examples used for cost calculations are good faith estimates and averages using the department's professional judgement.
7. Affected entities are assumed to be in compliance with all applicable environmental laws and regulations.
8. A 25,000 deductible amount is required by RSMo, Section 260.925. Although this deductible amount is required by the statute, it is being listed in the summary of fiscal impact section as a private entity cost.
9. Money expended for cleanups by the Drycleaning Environmental Response Trust Fund above the \$25,000 deductible is not being included in the public entity fiscal note since this is not a cost to the state. Money in the Drycleaning Environmental Response Trust Fund has been paid by the dry cleaner facilities through their annual registration fees and surcharges.
10. The Drycleaning Environmental Response Trust Fund is not liable for the payment of costs in excess of one million dollars at any one contaminated dry cleaning site, as stated in RSMo, Section 260.920.



FISCAL NOTE  
PRIVATE ENTITY COST

I. RULE NUMBER

Title: Department of Natural Resources

Division: Hazardous Waste Management Commission

Chapter: Drycleaning Environmental Response Trust Fund

Type of Rulemaking: Proposed Rule

Rule Number and Name: 10 CSR 25-17.080 Site Characterization and Corrective Action

II. SUMMARY OF FISCAL IMPACT

Classification by types of the business entities which would likely be affected:	Number likely to be affected <sup>1</sup>	Item	Itemized Cost
Privately-owned dry cleaning facilities storing solvents for cleaning garments and for former dry cleaning facilities that are abandoned that are suspected of releasing dry cleaning solvents to the environment requiring submission of a site characterization report and corrective action be performed.	400	Site Characterization Plan/Report	\$ 15,320,000
	320	Corrective Action Plan Implementation and Report	\$ 63,680,000
		<b>Total private entity compliance cost (See item 2 in Section III)</b>	<b>\$ 79,000,000</b>

<sup>1</sup>All privately-owned active and abandoned dry cleaning facilities that used solvents to clean garments are potentially affected by this rule. As of November 2003, the Missouri Department of Natural Resources has approximately 375 privately-owned dry cleaning facilities registered in the Hazardous Waste Program Fees and Taxes database. There are 125 abandoned sites known to exist. Of this entire universe, it is assumed for the purpose of this fiscal note that only 400 privately-owned active and abandoned dry cleaner facilities will have a reportable release and subsequently be required to implement a Site Characterization Plan within a year of the effective date of this rule. It is also assumed for the purpose of this fiscal note that only 320 privately-owned active and abandoned dry cleaner facilities will be required to implement a Corrective Action Plan within a year of the effective date of this rule.

III. WORKSHEET

1. Based upon the experience of department staff, it is assumed that 80% or 400 of the 500 privately-owned active and abandoned dry cleaning facilities will be required to conduct a site characterization to determine the extent of the

release. Based on this assumption, the department assumes 400 privately-owned active and abandoned dry cleaning facilities will be required to conduct a site characterization and submit a report to the department.

2. Based upon the experience of department staff, it is assumed that 80% or 320 of the 400 privately-owned active and abandoned dry cleaning facilities required to conduct a site characterization to determine the extent of the release will also be required to prepare and implement a Corrective Action Plan.
3. The owner or operator of an active and the owner or operator of an abandoned dry cleaning facility shall be liable for the first twenty-five thousand dollars of corrective action costs incurred because of a release from an active or abandoned dry cleaning facility. This 25,000 deductible amount is required by RSMo, Section 260.925. Although this deductible amount is required by the statute, it is being listed in the summary of fiscal impact section as a private entity cost.
4. **Site characterization costs.** As noted in the assumption above, the department assumes that 400 of the 500 active and abandoned former privately-owned dry cleaner facilities required to conduct site characterization activities and submit a report. Based on research of cleanups of dry cleaning facilities conducted in other states, the estimated cost to complete a site characterization and prepare and submit a site characterization report is \$ 38,300, as follows:

Project manager = \$ 95 per hour x 20 hours	· \$ 1,900
Professional Geologist = \$ 125 per hour x 8 hours	= \$ 1,000
Other Labor = \$ 25 per hour x 40 hours	= \$ 1,000
Drilling equipment = \$ 1,700 x 12 hours	· \$ 20,400
Monitoring well installation · \$ 500 x 5 wells	= \$ 2,500
Sampling analysis = \$ 600 per sample x 15 samples	\$ 9,000
Final report = \$ 2,500 per report x 1	= \$ 2,500

Total site characterization costs = \$ 38,300

400 privately-owned active and abandoned dry cleaner facilities x \$ 38,300 = \$ 15,320,000

**Total private entity compliance cost for requirement to conduct site characterization = \$ 15,320,000 \*\***

\*\* See item 2 above

5. **Corrective Action costs.** As noted in the assumption above, the department assumes that 320 of the 400 active and abandoned former privately-owned dry cleaner facilities required to conduct site characterization will also require corrective action activities and be required to submit a report. Although there are other available techniques for remediation of contamination at a dry cleaner release, cost can vary widely depending on the selected remedy. Therefore, for the purposes of this fiscal note, excavation of the contaminated soils is assumed to be the method of remediation of soils and pump and treat the recommended method of remediation for groundwater. Based on research of cleanups of dry cleaning facilities conducted in other states, the estimated cost to complete corrective action and prepare and submit a Corrective Action Report is \$ 199,000, as follows:

Project manager – \$ 95 per hour x 40 hours	– \$ 3,800
Professional Geologist – \$ 125 per hour x 8 hours	– \$ 1,000
Other Labor = \$ 25 per hour x 30 hours	– \$ 750
Dig and Haul – 200 cubic yds x \$ 140 per cubic yd	- \$ 28,000
Hauling fees = \$ 20 per hour x 10 hours	= \$ 200
Pump and Treat installation	· \$ 50,000
Pump & Treat O&M	= \$ 100,000
Groundwater Monitoring – \$ 150 x 5 wells	\$ 750
Sampling analysis · \$ 600 per sample x 20 samples	= \$ 12,000
Final report – \$ 2,500 per report x 1	\$ 2,500

Total corrective action costs · \$ 199,000

320 privately-owned active and abandoned dry cleaner facilities x \$199,000 = \$ 63,680,000

**Total private entity compliance cost for requirement to conduct a site characterization = \$ 63,680,000 \*\***

**\*\* See item 2 above.**

#### IV. ASSUMPTIONS

1. The total estimated cost is provided based on the number of active and abandoned facilities known to the department.
2. The universe of affected entities is based upon the experience of staff of the Missouri Department of Natural Resources. Entities affected are active and abandoned dry cleaning facilities that used solvents to clean garments and having a reportable release or suspected release to the environment. Department staff assume that spill reports at dry cleaning facilities will increase due to the requirement in this rule to report releases or suspected releases. It is assumed that this information provides a fair and accurate estimate of the universe of active and abandoned dry cleaner facilities subject to the requirements of this rule.
3. The department does not have previous cleanup costs documented for dry cleaning sites, therefore, our cost estimates are based on research of cleanups of dry cleaning facilities conducted in states bordering Missouri.
4. Estimates assume a constant regulatory context, which requires no reporting standards beyond those currently required or imposed by this rulemaking.
5. Estimates assume there will be no new or sudden changes in technology, which would influence costs.
6. This fiscal note is not in lieu of the requirements or a model for compliance with this rule. The examples used for cost calculations are good faith estimates and averages using the department's professional judgement.
7. Affected entities are assumed to be in compliance with all applicable environmental laws and regulations.
8. A 25,000 deductible amount is required by RSMo, Section 260.925. Although this deductible amount is required by the statute, it is being listed in the summary of fiscal impact section as a private entity cost.
9. Money expended for cleanups by the Drycleaning Environmental Response Trust Fund above the \$25,000 deductible is not being included in the public entity fiscal note since this is not a cost to the state. Money in the Drycleaning Environmental Response Trust Fund has been paid by the dry cleaner facilities through their annual registration fees and surcharges.
10. The Drycleaning Environmental Response Trust Fund is not liable for the payment of costs in excess of one million dollars at any one contaminated dry cleaning site, as stated in RSMo, Section 260.920.

**Title 10—DEPARTMENT OF NATURAL RESOURCES  
Division 25—Hazardous Waste Management Commission  
Chapter 17—Dry-Cleaning Environmental Response  
Trust Fund**

**PROPOSED RULE**

**10 CSR 25-17.090 Application Procedures**

*PURPOSE: This rule describes the application procedures for the Dry-Cleaning Environmental Response Trust (DERT) Fund.*

(1) Any owner or operator of an active or abandoned dry cleaning facility who wishes to participate in the Dry-Cleaning Environmental Response Trust (DERT) Fund shall apply to the DERT Fund on a form provided by the department.

(A) An application form shall be submitted for each site for which an owner or operator of an active or abandoned dry cleaning facility desires participation in the DERT Fund.

(B) Applications shall include information on all known environmental conditions that exist at the site. To be eligible, one (1) groundwater or one (1) soil sample shall provide proof that the level of contamination at the site exceeds the department's cleanup levels or other evidence confirming contamination must be provided.

(2) The department shall review applications within thirty (30) days of receipt of the application and respond to such application in writing with one (1) of the following options:

(A) A notice of acceptance of eligibility;

(B) If the response is a request for clarification or information, it shall specify a date by which the applicant shall respond; or

(C) If the response is a rejection, it shall list the reasons for the rejection.

*AUTHORITY: section 260.905, RSMo 2000. Original rule filed April 15, 2004.*

*PUBLIC COST: This proposed rule is estimated to cost state agencies and political subdivisions forty-three thousand nine hundred fifty-six dollars (\$43,956) in the aggregate of the estimated duration of the rule.*

*PRIVATE COST: This proposed rule is estimated to cost private entities \$7,398,652 in the aggregate of the estimated duration of the rule.*

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this proposed rule and others beginning at 9:00 a.m. on June 16, 2004 at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any person wishing to speak at the hearing shall send a written request to the Secretary of the Hazardous Waste Management Commission at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written requests to speak must be postmarked by midnight on June 2, 2004. Faxed or e-mailed correspondence will not be accepted.*

*Any person may submit written comments on this proposed rule. Written comments shall be sent to the Director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written comments must be postmarked by midnight on June 25, 2004. Faxed or e-mailed correspondence will not be accepted.*

*Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program, at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.*

FISCAL NOTE  
PUBLIC ENTITY COST

I. RULE NUMBER

Title: Department of Natural Resources

Division: Hazardous Waste Management Commission

Chapter: Drycleaning Environmental Response Trust Fund

Type of Rulemaking: Proposed Rule

Rule Number and Name: 10 CSR 25-17.090 Application Procedures

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Number likely to be affected <sup>1</sup>	Item	Itemized Cost
Missouri Department of Natural Resources	400	Application review	\$ 43,956
		<b>Total public entity administrative cost</b>	<b>\$ 43,956</b>

<sup>1</sup>All privately-owned active and abandoned dry cleaning facilities that used solvents to clean garments are potentially affected by this rule. As of November 2003, the Missouri Department of Natural Resources has approximately 375 privately-owned dry cleaning facilities registered in the Hazardous Waste Fees and Taxes database. There are 125 abandoned sites known to exist. Of this entire universe, it is assumed for the purpose of this fiscal note that 400 privately-owned active and abandoned dry cleaner facilities will apply to participate in the Drycleaning Environmental Response Trust Fund. Public entities are excluded from this rule, therefore, the fiscal note includes only the costs associated with staff time for review and response time related to this rule.

III. WORKSHEET

- Personnel costs for merit employees are calculated using the Market Rate step of the fiscal year 2004 merit schedule produced by the Missouri Commission on Management and Productivity (COMAP). Monthly salaries are multiplied by 12 to obtain an annual cost. The annual cost is multiplied by a factor of 31.8% with the additional amount added to the annual salary to account for fringe benefits. \$6,617 is added for expense and equipment costs. This sum is then multiplied by 26.4% and the additional amount added to account for indirect costs. Hourly costs are found by dividing the adjusted annual costs by 2080, the number of hours for a Full-Time Equivalent (FTE). All adjustment factors are based on current information confirmed by the hazardous waste program budget staff. Calculations for estimating the personnel costs of private entity employees are based on the same assumptions as for merit employees. Using this formula and the appropriate salaries, the following hourly rates are assumed to be the most accurate for purposes of this fiscal note:

Environmental Specialist IV hourly rate	---	\$ 41.75
Geologist II hourly rate	---	\$ 38.71

Environmental Specialist III hourly rate	=	\$ 36.63
Management Analysis Specialist I hourly rate	=	\$ 34.53
Administrative Office Support Assistant	=	\$ 25.69

- The universe of affected entities is based upon the experience of staff of the Missouri Department of Natural Resources. Entities affected are privately-owned active and abandoned dry cleaning facilities having contamination and desiring participation in the Drycleaning Environmental Response Trust Fund. Based upon the experience of department staff, it is assumed that 80% or 400 of the 500 privately-owned active and abandoned dry cleaning facilities will be applying to the Drycleaning Environmental Response Trust Fund and preparing the application form.
- Based on task/time correlation, the department estimates it will take an environmental specialist III 3 hours to receive, analyze, and respond to the application form submitted by private entities in compliance with this rule. The private entity compliance costs are counted in the private entity fiscal note.

Environmental Specialist III salary	=	\$ 36.63 per hour
\$ 36.63 x 3 hours	=	\$ 109.89 per application
400 application forms submitted x \$ 109.89	=	\$ 43,956

**Total cost to Missouri Department of Natural Resources to receive, analyze, and respond to application forms submitted in compliance with this rule = \$ 43,956.**

#### IV. ASSUMPTIONS

- The total estimated cost is provided based on the number of active and abandoned facilities known to the department.
- The universe of affected entities is based upon the experience of staff of the Missouri Department of Natural Resources. Entities affected are active and abandoned dry cleaning facilities that used solvents to clean garments and having a reportable release or suspected release to the environment. Department staff assume that spill reports at dry cleaning facilities will increase due to the requirement in this rule to report releases or suspected releases. It is assumed that this information provides a fair and accurate estimate of the universe of active and abandoned dry cleaner facilities subject to the requirements of this rule.
- Fiscal year 2004 dollars are used to estimate the costs.
- Estimates assume a constant regulatory context, which requires no reporting standards beyond those currently required or imposed by this rulemaking.
- Estimates assume there will be no new or sudden changes in technology, which would influence costs.
- This fiscal note is not in lieu of the requirements or a model for compliance with this rule. The examples used for cost calculations are good faith estimates and averages using the department's professional judgement.
- Affected entities are assumed to be in compliance with all applicable environmental laws and regulations.

FISCAL NOTE  
PRIVATE ENTITY COST

I. RULE NUMBER

Title: Department of Natural Resources

Division: Hazardous Waste Management Commission

Chapter: Drycleaning Environmental Response Trust Fund

Type of Rulemaking: Proposed Rule

Rule Number and Name: 10 CSR 25-17.090 Application Procedures

II. SUMMARY OF FISCAL IMPACT

Classification by types of the business entities which would likely be affected:	Number likely to be affected <sup>1</sup>	Item	Itemized Cost
Privately-owned active or abandoned dry cleaning facilities desiring participation in the Drycleaning Environmental Response Trust Fund	400	Application preparation	\$ 14,652
	400	Site check	\$ 7,384,000
		<b>Total private entity compliance cost</b>	<b>\$ 7,398,652</b>

<sup>1</sup>All privately-owned active and abandoned dry cleaning facilities that used solvents to clean garments are potentially affected by this rule. As of November 2003, the Missouri Department of Natural Resources has approximately 375 privately-owned dry cleaning facilities registered in the Hazardous Waste Program Fees and Taxes database. There are 125 abandoned sites known to exist. Of this entire universe, it is assumed for the purpose of this fiscal note that 400 privately-owned active and abandoned dry cleaner facilities will apply to participate in the Drycleaning Environmental Response Trust Fund.

III. WORKSHEET

- Personnel costs for merit employees are calculated using the Market Rate step of the fiscal year 2004 merit schedule produced by the Missouri Commission on Management and Productivity (COMAP). Monthly salaries are multiplied by 12 to obtain an annual cost. The annual cost is multiplied by a factor of 31.8% with the additional amount added to the annual salary to account for fringe benefits. \$6,617 is added for expense and equipment costs. This sum is then multiplied by 26.4% and the additional amount added to account for indirect costs. Hourly costs are found by dividing the adjusted annual costs by 2080, the number of hours for a Full-Time Equivalent (FTE). All adjustment factors are based on current information confirmed by the hazardous waste program budget staff. Calculations for estimating the personnel costs of private entity employees are based on the same assumptions as for merit employees. Using this formula and the appropriate salaries, the following hourly rates are assumed to be the most accurate for purposes of this fiscal note:

Environmental Specialist IV hourly rate = \$ 41.75

Geologist II hourly rate		\$ 38.71
Environmental Specialist III hourly rate	=	\$ 36.63
Management Analysis Specialist I hourly rate	-	\$ 34.53
Administrative Office Support Assistant	-	\$ 25.69

2. The universe of affected entities is based upon the experience of staff of the Missouri Department of Natural Resources. Entities affected are privately-owned active and abandoned dry cleaning facilities having contamination and desiring participation in the Drycleaning Environmental Response Trust Fund. Based upon the experience of department staff, it is assumed that 80% or 400 of the 500 privately-owned active and abandoned dry cleaning facilities will be applying to the Drycleaning Environmental Response Trust Fund and preparing the application form.
3. **Application preparation costs.** As noted in the assumption above, the department assumes that 400 of the 500 privately-owned active and abandoned dry cleaner facilities will be preparing the application form. Private entity costs for purposes of this fiscal note include the costs incurred by the private entity to comply with the requirements of the rule.

Private entity compliance costs: The cost for an owner or operator of an active or abandoned dry cleaning facility to complete and submit the application form as required in this rule is estimated at an average of 1 hour. It is assumed that the application preparation will be performed by an individual equivalent to an Environmental Specialist III, with an appropriate hourly rate.

Environmental Specialist III hourly rate \$ 36.63 per hour

\$ 36.63 x 1 hour - \$ 36.63 estimated cost for application preparation

\$ 36.63 x 400 facilities = \$ 14,652

**Total application preparation cost for private entities = \$ 14,652**

4. **Site check costs.** As noted in the assumption above, the department assumes that 400 of the 500 privately-owned active and abandoned dry cleaner facilities must conduct a site check and submit a report. Based on research of cleanups of dry cleaning facilities conducted in other states, the estimated cost to complete a site check and prepare and submit a report is \$ 18,460, as follows:

Private entity compliance costs: Applications shall include information on all known environmental conditions that exist at the site. To be eligible for participation in the fund, at a minimum, one groundwater and one soil sample must be obtained to provide proof that the level of contamination at the site exceeds the department's cleanup levels. The cost for an owner or operator of an active or abandoned dry cleaning facility to collect and analyze the samples as required in this rule is estimated at an average of 10 hours.

Project manager	\$ 95 per hour x 8 hours	- \$ 760
Other labor	- \$ 25 per hour x 8 hours	- \$ 200
Drilling equipment	- \$ 1,700 x 8 hours	- \$ 13,600
Monitoring well installation	- \$ 500 x 1 well	= \$ 500
Sampling analysis	\$ 600 per sample x 4 samples	= \$ 2,400
Final report	- \$ 1,000 per report x 1	= \$ 1,000

**Total site check costs = \$ 18,460**

**\$ 18,460 x 400 privately-owned active and abandoned dry cleaner facilities = \$ 7,384,000**

**Total private entity compliance cost for requirement to conduct a site check = \$ 7,384,000**



#### **IV. ASSUMPTIONS**

1. The total estimated cost is provided based on the number of active and abandoned facilities known to the department.
2. The universe of affected entities is based upon the experience of staff of the Missouri Department of Natural Resources. Entities affected are active and abandoned dry cleaning facilities that used solvents to clean garments and having a reportable release or suspected release to the environment. Department staff assume that spill reports at dry cleaning facilities will increase due to the requirement in this rule to report releases or suspected releases. It is assumed that this information provides a fair and accurate estimate of the universe of active and abandoned dry cleaner facilities subject to the requirements of this rule.
3. The department does not have previous cleanup costs documented for dry cleaning sites, therefore, our cost estimates are based on research of cleanups of dry cleaning facilities conducted in states bordering Missouri.
4. Estimates assume a constant regulatory context, which requires no reporting standards beyond those currently required or imposed by this rulemaking.
5. Estimates assume there will be no new or sudden changes in technology, which would influence costs.
6. This fiscal note is not in lieu of the requirements or a model for compliance with this rule. The examples used for cost calculations are good faith estimates and averages using the department's professional judgement.
7. Affected entities are assumed to be in compliance with all applicable environmental laws and regulations.

**Title 10—DEPARTMENT OF NATURAL RESOURCES  
Division 25—Hazardous Waste Management Commission  
Chapter 17—Dry-Cleaning Environmental Response  
Trust Fund**

**PROPOSED RULE**

**10 CSR 25-17.100 Participation and Eligibility for Funding**

*PURPOSE: This rule describes eligibility requirements for participation and funding of the Dry-Cleaning Environmental Response Trust (DERT) Fund.*

(1) Any owner or operator of an active or the owner or operator of an abandoned dry cleaning facility may apply to participate in the Dry-Cleaning Environmental Response Trust (DERT) Fund.

(A) Dry cleaning facilities located in prisons, governmental entities, hotels, motels and industrial laundries are not eligible for participation in the DERT Fund.

(B) Governmental entities that own or are in possession and control of an abandoned facility otherwise eligible for coverage may apply to the DERT Fund as long as the governmental entity follows the procedures of 10 CSR 25-17.050 through 10 CSR 25-17.170.

(2) An active or abandoned dry cleaning facility may be considered ineligible if the owner or operator owes the annual dry cleaning facility registration surcharge or dry cleaning solvent surcharge, including any penalties or interest, at the time the application for the DERT Fund is submitted or contamination from dry cleaner solvents was discovered.

*AUTHORITY: sections 260.905 and 260.925, RSMo 2000. Original rule filed April 15, 2004.*

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

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

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this proposed rule and others beginning at 9:00 a.m. on June 16, 2004 at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any person wishing to speak at the hearing shall send a written request to the Secretary of the Hazardous Waste Management Commission at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written requests to speak must be postmarked by midnight on June 2, 2004. Faxed or e-mailed correspondence will not be accepted.*

*Any person may submit written comments on this proposed rule. Written comments shall be sent to the Director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written comments must be postmarked by midnight on June 25, 2004. Faxed or e-mailed correspondence will not be accepted.*

*Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program, at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.*

**Title 10—DEPARTMENT OF NATURAL RESOURCES  
Division 25—Hazardous Waste Management Commission  
Chapter 17—Dry-Cleaning Environmental Response  
Trust Fund**

**PROPOSED RULE**

**10 CSR 25-17.110 Eligible Costs**

*PURPOSE: This rule describes eligible costs associated with the assessment, investigation, or remediation of dry cleaning sites.*

(1) Monies from the Dry-Cleaning Environmental Response Trust (DERT) Fund shall be utilized to address contamination resulting from releases of dry cleaning solvents in accordance with section 260.925, RSMo.

(A) Eligible payments from the DERT fund shall include:

1. Costs for investigation and assessment of releases from a dry cleaning facility, including costs of off-site investigations and assessments of contamination which may have moved off of the dry cleaning facility;

2. Costs for necessary or appropriate emergency action, including but not limited to treatment, restoration or replacement of drinking water supplies, to assure that the human health or safety is not threatened by a release or potential release;

3. Costs for remediation of releases from dry cleaning facilities, including contamination which may have moved off of the dry cleaning facility, which remediation shall consist of the preparation of a corrective action plan, which may include activity and use limitations for the site, and the cleanup of affected soil, groundwater and surface waters, using an alternative that is cost-effective, technologically feasible and reliable, and provides adequate protection of human health and environment and to the extent practicable minimizes environmental damage. Costs for remediation beyond that necessary to achieve contaminant levels that are protective of human health and the environment are not eligible;

4. Costs for operation and maintenance of corrective action;

5. Costs for monitoring of releases from dry cleaning facilities including contamination which may have moved off of the dry cleaning facility;

6. Payment of reasonable costs incurred by the director in providing field and laboratory services;

7. Reasonable costs of restoring property as nearly as practicable to the condition that existed prior to activities associated with the investigation of a release or cleanup or remediation activities;

8. Costs of removal and proper disposal of wastes generated by a release of a dry cleaning solvent; and

9. Payment of costs of corrective action conducted by the department or by entities other than the department but approved by the department, whether or not such corrective action is set out in a corrective action plan; except that, there shall be no reimbursement for corrective action costs incurred before August 28, 2000. Costs, under this paragraph, are not eligible unless the department has declared a hazardous substance emergency and has provided an opportunity and/or requirement to the responsible party, if available, to conduct the corrective action activities.

(B) At any multi-source site, the department shall utilize the monies in the fund to pay for the proportionate share of the liability for the assessment, investigation, and corrective action costs which is attributable to a release from one (1) or more eligible dry cleaning facilities and for that proportionate share of the liability only. At any multi-source site, the director is authorized to make a determination of the relative liability of the fund for costs of corrective action, expressed as a percentage of the total cost of assessment, investigation, and corrective action at a site, whether known or unknown. The director shall issue an order establishing such percentage of liability. Such order shall be binding and shall control the obligation of the fund until or unless amended by the director. In the event of an appeal from such order, such percentage of liability shall be controlling for costs incurred during the pendency of the appeal.

(2) Nothing in section (1) of this rule shall be construed to authorize the department to obligate moneys in the fund for payment of costs that are not integral to corrective action for a release of dry cleaning

solvents from a dry cleaning facility. Moneys from the fund shall not be used:

(A) For corrective action at sites that are contaminated by solvents normally used in dry cleaning operations where the contamination did not result from the operation of a dry cleaning facility;

(B) For corrective action at sites, other than dry cleaning facilities, that are contaminated by dry cleaning solvents which were released while being transported to or from a dry cleaning facility;

(C) To pay any fine or penalty brought against a dry cleaning facility operator under state or federal law;

(D) To pay any costs related to corrective action at a dry cleaning facility that has been included by the United States Environmental Protection Agency on the national priorities list;

(E) For corrective action at sites with active dry cleaning facilities where the owner or operator is not in compliance with sections 260.900 to 260.960, RSMo, rules and regulations adopted pursuant to sections 260.900 to 260.960, RSMo, orders of the director pursuant to sections 260.900 to 260.960, RSMo, or any other applicable federal or state environmental statutes, rules or regulations;

(F) For corrective action at sites with abandoned dry cleaning facilities that have been taken out of operation prior to July 1, 2004, and not documented by or reported to the department by July 1, 2004. Any person reporting such a site to the department shall include any available evidence that the site once contained a dry cleaning facility;

(G) Assessment, investigation, and remediation costs incurred prior to August 28, 2000;

(H) Compensating third parties for bodily injury or property damage caused by a release from a dry cleaning facility, other than property damage included in the corrective action plan under 10 CSR 25-17.110(1)(A)7;

(I) Costs necessary to remove an underground or aboveground storage tank system;

(J) Costs of demolition and removal of building, equipment, etc., except as required as a result of necessary cleanup activities and pre-approved by the department;

(K) Costs of disposal of soil, groundwater, etc., that is not contaminated with contaminants associated with dry cleaning solvents at levels such that the Department of Natural Resources requires corrective action;

(L) Markup of costs charged by a treatment facility which is used for the disposal of contaminated soil, groundwater, etc.;

(M) Markup of costs charged by laboratory for analysis of soil, groundwater, surface water, etc., samples;

(N) Markup of costs by the environmental consultant or contractor of major subcontracted work done as part of the assessment, investigation, or remedial work, such as drilling, well installation, or push-probe investigations;

(O) Installation of new or repair and maintenance of existing dry cleaning equipment;

(P) Preparation of claim submittals;

(Q) Paving or resurfacing, except as required as a result of necessary cleanup activities. Costs for resurfacing shall be paid on the basis of the actual cash value of the surface which existed immediately prior to cleanup activities; and

(R) Other costs not relevant to the assessment, investigation, or remediation of contamination caused by dry cleaning solvents from eligible facilities, as determined by the department.

*AUTHORITY: sections 260.905 and 260.925, RSMo 2000. Original rule filed April 15, 2004.*

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

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

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this proposed rule and others beginning at 9:00 a.m. on June 16, 2004 at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any person wishing to speak at the hearing shall send a written request to the Secretary of the Hazardous Waste Management Commission at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written requests to speak must be postmarked by midnight on June 2, 2004. Faxed or e-mailed correspondence will not be accepted.*

*Any person may submit written comments on this proposed rule. Written comments shall be sent to the Director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written comments must be postmarked by midnight on June 25, 2004. Faxed or e-mailed correspondence will not be accepted.*

*Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program, at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.*

**Title 10—DEPARTMENT OF NATURAL RESOURCES  
Division 25—Hazardous Waste Management Commission  
Chapter 17—Dry-Cleaning Environmental Response  
Trust Fund**

**PROPOSED RULE**

**10 CSR 25-17.120 Payment of Deductible and Limits on Payments**

*PURPOSE: This rule explains the deductible amounts and limits on expenditures from the Dry-Cleaning Environmental Response Trust (DERT) Fund.*

(1) The Dry-Cleaning Environmental Response Trust (DERT) Fund shall not be liable for the payment of costs in excess of one (1) million dollars at any one (1) contaminated dry cleaning site.

(2) The DERT Fund shall not be liable for the payment of costs for any one (1) site in excess of twenty-five percent (25%) of the total moneys in the fund during any fiscal year.

(3) The owner or operator of an active and the owner or operator of an abandoned dry cleaning facility shall be liable for the first twenty-five thousand dollars (\$25,000) of corrective action costs incurred because of a release from an active or abandoned dry cleaning facility.

*AUTHORITY: sections 260.905 and 260.925, RSMo 2000. Original rule filed April 15, 2004.*

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

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

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this proposed rule and others beginning at 9:00 a.m. on June 16, 2004 at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any person wishing to speak at the hearing shall send a written request to the Secretary of the Hazardous Waste Management Commission at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written*

requests to speak must be postmarked by midnight on June 2, 2004. Faxed or e-mailed correspondence will not be accepted.

Any person may submit written comments on this proposed rule. Written comments shall be sent to the Director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO, 65102-0176. To be accepted, written comments must be postmarked by midnight on June 25, 2004. Faxed or e-mailed correspondence will not be accepted.

Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program, at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

**Title 10—DEPARTMENT OF NATURAL RESOURCES  
Division 25—Hazardous Waste Management Commission  
Chapter 17—Dry-Cleaning Environmental Response  
Trust Fund**

**PROPOSED RULE**

**10 CSR 25-17.130 Suspension of Collection of Surcharges;  
Reinstatement**

*PURPOSE:* This rule describes the procedures for suspension of collection of surcharges and the reinstatement of those surcharges.

(1) If the unobligated principal of the Dry-Cleaning Environmental Response Trust (DERT) Fund equals or exceeds five (5) million dollars on April first of any year, the annual dry cleaning facility registration surcharge and the dry cleaning solvent surcharge imposed by sections 260.935 and 260.940, RSMo, shall not be collected on or after the next July first until such time as on April first of any year thereafter the unobligated principal balance of the fund equals two (2) million dollars or less, then the annual dry cleaning facility registration surcharge imposed by section 260.935, RSMo and the dry cleaning solvent surcharge imposed by section 260.940, RSMo shall again be collected on and after the next July first.

*AUTHORITY:* sections 260.905 and 260.945, RSMo 2000. Original rule filed April 15, 2004.

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

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

**NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS:** The Missouri Hazardous Waste Management Commission will hold a public hearing on this proposed rule and others beginning at 9:00 a.m. on June 16, 2004 at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any person wishing to speak at the hearing shall send a written request to the Secretary of the Hazardous Waste Management Commission at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written requests to speak must be postmarked by midnight on June 2, 2004. Faxed or e-mailed correspondence will not be accepted.

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**Title 10—DEPARTMENT OF NATURAL RESOURCES  
Division 25—Hazardous Waste Management Commission  
Chapter 17—Dry-Cleaning Environmental Response  
Trust Fund**

**PROPOSED RULE**

**10 CSR 25-17.140 General Reimbursement Procedures**

*PURPOSE:* This rule describes general reimbursement procedures for the Dry-Cleaning Environmental Response Trust (DERT) Fund.

(1) Dry-Cleaning Environmental Response Trust (DERT) Fund participants are required to seek pre-approval of site assessment, investigation, or remedial activities by following the procedures outlined below:

(A) Obtain proposals from qualified contractors or consultants to demonstrate that a fair and reasonable price will be paid; and

(B) Submit the bid(s) or proposal(s) to the director. The bids should contain the following:

1. Cost estimate for field activities;
2. Cost estimate for removal, treatment, and/or disposal of contaminated media, which includes but is not limited to soil, water, and air;
3. Cost estimate for project management, supervision, data analysis, reporting, and other activities as appropriate;
4. Cost estimate for collection and analysis of samples for contaminated media, which includes but is not limited to soil, water, and air;
5. Contingency costs, expressed as unit costs, for any additional costs which may be incurred if conditions warrant;
6. Cost estimate for any equipment purchased to conduct remedial activities; and
7. Cost estimate for any anticipated work not described above.

(2) The department will respond in writing within sixty (60) days after the work plan and cost estimate is received by the department. One (1) of the following responses will be made:

(A) The response will include a statement of whether the cost estimate(s) are eligible, reasonable, and necessary.

1. This response will be based on the information and reports submitted for the particular project and compared to a review of cost estimates for similar claims;

(B) If the cost estimate is incomplete or contains costs which are higher than the department deems reasonable, the director may:

1. Ask the participant to solicit additional cost estimates;
2. Ask the participant to justify the cost estimate in writing; and
3. Agree to pay a lesser cost deemed reasonable by the director; and

(C) The department reserves the right to reject a proposed cost estimate, that the department deems ineligible, unreasonable, and unnecessary. Any rejection shall be made in writing and shall contain the specific reasons for the rejection of the cost estimate.

(3) Reimbursement of the DERT Fund monies will be accomplished based on the site prioritization method described in 10 CSR 25-17.060.

(A) DERT Funds will be allocated to prioritized sites in the following proportions: high priority sites—sixty percent (60%); medium priority sites—thirty percent (30%); low priority sites—ten percent (10%). In any fiscal year, if the funding allocations in any priority category are not used, those funds may be reallocated to other priority categories, starting with any high priority sites and followed by medium and low priority sites.

(B) Sites that are not allocated with monies for a fiscal year, but wish to proceed with cleanup and remain eligible for future available funding, shall have assessment, investigation, and corrective action work plans and cost estimates pre-approved by the department.

Failure to obtain approval for these costs may subject the DERT Fund participant to reduction or denial of reimbursement of costs.

(4) Participants requesting payment from the DERT Fund shall send invoices for the work done along with any reports generated for the work to the DERT Fund address.

(A) Invoices shall be submitted within six (6) months of the date that the proposed work is completed.

(B) Failure to submit invoices within the time frame may result in a denial of payments

(C) Original invoices are requested. Photocopies may be submitted with a signed statement that the copies are accurate and true.

(5) Eligible costs will be reduced by the applicable deductible for the dry cleaning facility until such deductible amount is met.

(6) The department will respond in writing to every request for reimbursement within thirty (30) days of receipt of the request. If the response indicates that some or all of the costs are being denied, then the response will state the reasons for the denial of costs.

*AUTHORITY: section 260.905, RSMo 2000. Original rule filed April 15, 2004.*

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

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

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this proposed rule and others beginning at 9:00 a.m. on June 16, 2004 at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any person wishing to speak at the hearing shall send a written request to the Secretary of the Hazardous Waste Management Commission at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written requests to speak must be postmarked by midnight on June 2, 2004. Faxed or e-mailed correspondence will not be accepted.*

*Any person may submit written comments on this proposed rule. Written comments shall be sent to the Director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written comments must be postmarked by midnight on June 25, 2004. Faxed or e-mailed correspondence will not be accepted.*

*Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program, at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.*

**Title 10—DEPARTMENT OF NATURAL RESOURCES  
Division 25—Hazardous Waste Commission  
Chapter 17—Dry-Cleaning Environmental Response  
Trust Fund**

**PROPOSED RULE**

**10 CSR 25-17.150 Claims**

*PURPOSE: This rule describes who can make claims against the Dry-Cleaning Environmental Response Trust (DERT) Fund, when and how such claims shall be made, how to request payment from the DERT Fund and describes claims appeals.*

(1) To ensure eligibility in the Dry-Cleaning Environmental Response Trust (DERT) Fund the owner or operator should submit a

notice to the department as soon as reasonably possible after a dry cleaning facility becomes aware of contamination.

(2) After being accepted in the DERT Fund, prior to the initiation of any assessment, investigation, or cleanup activities, whether within the deductible or in excess of the deductible, the costs shall be first approved by the department. Failure to obtain approval for these costs may subject the DERT Fund participant to reduction or denial of reimbursement of costs.

(A) Fund participants are not required to obtain prior approval of the department for the reasonable costs of emergency response or of necessary first aid. The DERT Fund participant shall notify the department of such activities as soon as practical.

(3) Before the initiation of any assessment, investigation, or cleanup activities, the DERT Fund participant will provide a consent of access form that states the property's owners consent for the department or its agents or contractors to access the facility or property.

(4) The department and the commission retain the final authority to make a determination concerning all eligibility issues, including but not limited to whether costs for products and services were reasonable, and whether the costs incurred were necessary to achieve the cleanup activities required by the Department of Natural Resources.

(5) Claim Dispute Resolution.

(A) If a DERT Fund participant disagrees with a payment decision, he or she shall send or deliver the objection(s) or reason(s) for the disagreement in writing to the department within ninety (90) days of the date the check or claim denial is issued.

(B) The department will then review the claim considering the objections or reasons, and respond in writing to the DERT Fund participant within thirty (30) days of receipt. The director must—

1. Affirm the decision previously made;
2. Modify the decision previously made;
3. Refer the claim to the commission; or

4. Request additional information or clarification from the owner or operator making the appeal. Within thirty (30) days of receipt of the additional information or clarifications, the department shall take one (1) of the three (3) steps listed above. If no response is received, the department may terminate the dispute resolution process, which leaves in place the original decision.

(C) If the DERT Fund participant still disagrees with department's decision, he or she may request further review by sending a written request within sixty (60) days of receipt of the director's decision to the commission, in accordance with 10 CSR 25-1.010.

(D) The commission will then consider the disputed claim at one (1) of its two (2) next regularly scheduled meetings.

*AUTHORITY: section 260.905, RSMo 2000. Original rule filed April 15, 2004.*

*PUBLIC COST: This proposed rule is estimated to cost state agencies or political subdivisions eighty-two thousand eight hundred seventy-two dollars (\$82,872) in the aggregate of the estimated duration of the rule.*

*PRIVATE COST: This proposed rule is estimated to cost private entities forty-three thousand nine hundred fifty-six dollars (\$43,956) in the aggregate of the estimated duration of the rule.*

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this proposed rule and others beginning at 9:00 a.m. on June 16, 2004 at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any person wishing to speak at the hearing shall send a written request to the Secretary of the Hazardous Waste Management Commission at PO*

*Box 176, Jefferson City, MO, 65102-0176. To be accepted, written requests to speak must be postmarked by midnight on June 2, 2004. Faxed or e-mailed correspondence will not be accepted.*

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FISCAL NOTE  
PUBLIC ENTITY COST

I. RULE NUMBER

Title: Department of Natural Resources

Division: Hazardous Waste Management Commission

Chapter: Drycleaning Environmental Response Trust Fund

Type of Rulemaking: Proposed Rule

Rule Number and Name: 10 CSR 25-17.150 Claims

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Number likely to be affected <sup>1</sup>	Item	Itemized Cost
Missouri Department of Natural Resources	400	Claims review and processing	\$ 82,872
		<b>Total public entity administrative cost</b>	<b>\$ 82,872</b>

<sup>1</sup>All privately-owned active and abandoned dry cleaning facilities that used solvents to clean garments are potentially affected by this rule. As of November 2003, the Missouri Department of Natural Resources has approximately 375 privately-owned dry cleaning facilities registered in the Hazardous Waste Fees and Taxes database. There are 125 abandoned sites known to exist. Of this entire universe, it is assumed for the purpose of this fiscal note that 400 privately-owned active and abandoned dry cleaner facilities will request reimbursement from the Drycleaning Environmental Response Trust Fund. Public entities are excluded from this rule, therefore, the fiscal note includes only the costs associated with staff time for review and response time related to this rule.

III. WORKSHEET

- Personnel costs for merit employees are calculated using the Market Rate step of the fiscal year 2004 merit schedule produced by the Missouri Commission on Management and Productivity (COMAP). Monthly salaries are multiplied by 12 to obtain an annual cost. The annual cost is multiplied by a factor of 31.8% with the additional amount added to the annual salary to account for fringe benefits. \$6,617 is added for expense and equipment costs. This sum is then multiplied by 26.4% and the additional amount added to account for indirect costs. Hourly costs are found by dividing the adjusted annual costs by 2080, the number of hours for a Full-Time Equivalent (FTE). All adjustment factors are based on current information confirmed by the hazardous waste program budget staff. Calculations for estimating the personnel costs of private entity employees are based on the same assumptions as for merit employees. Using this formula and the appropriate salaries, the following hourly rates are assumed to be the most accurate for purposes of this fiscal note:

Environmental Specialist IV hourly rate = \$ 41.75

Geologist II hourly rate		\$ 38.71
Environmental Specialist III hourly rate	-	\$ 36.63
Management Analysis Specialist I hourly rate	-	\$ 34.53
Administrative Office Support Assistant	-	\$ 25.69

- The universe of affected entities is based upon the experience of staff of the Missouri Department of Natural Resources. Entities affected are privately-owned active and abandoned dry cleaning facilities having contamination and having been approved for participation in the Drycleaning Environmental Response Trust Fund. Based upon the experience of department staff, it is assumed that 80% or 400 of the 500 privately-owned active and abandoned dry cleaning facilities will be applying to the Drycleaning Environmental Response Trust Fund and will be requesting reimbursement from the fund.
- Based on task/time correlation, the department estimates it will take a management analysis specialist I six hours to receive, analyze, and process receipts for reimbursement that have been submitted by private entities in compliance with this rule. The private entity compliance costs are counted in the private entity fiscal note.

Management Analysis Specialist I salary	=	\$ 34.53 per hour
\$ 34.53 x 6 hours	=	\$ 207.18 per reimbursement request
400 reimbursement requests submitted x \$ 207.18	=	\$ 82,872

**Total cost to Missouri Department of Natural Resources to receive, analyze, and respond to reimbursement requests submitted in compliance with this rule = \$ 82,872.**

#### IV. ASSUMPTIONS

- The total estimated cost is provided based on the number of active and abandoned facilities known to the department.
- The universe of affected entities is based upon the experience of staff of the Missouri Department of Natural Resources. Entities affected are active and abandoned dry cleaning facilities that used solvents to clean garments and having a reportable release or suspected release to the environment. Department staff assume that spill reports at dry cleaning facilities will increase due to the requirement in this rule to report releases or suspected releases. It is assumed that this information provides a fair and accurate estimate of the universe of active and abandoned dry cleaner facilities subject to the requirements of this rule.
- Fiscal year 2004 dollars are used to estimate the costs.
- Estimates assume a constant regulatory context, which requires no reporting standards beyond those currently required or imposed by this rulemaking.
- Estimates assume there will be no new or sudden changes in technology, which would influence costs.
- This fiscal note is not in lieu of the requirements or a model for compliance with this rule. The examples used for cost calculations are good faith estimates and averages using the department's professional judgement.
- Affected entities are assumed to be in compliance with all applicable environmental laws and regulations.



FISCAL NOTE  
PRIVATE ENTITY COST

I. RULE NUMBER

Title: Department of Natural Resources

Division: Hazardous Waste Management Commission

Chapter: Drycleaning Environmental Response Trust Fund

Type of Rulemaking: Proposed Rule

Rule Number and Name: 10 CSR 25-17.150 Claims

II. SUMMARY OF FISCAL IMPACT

Classification by types of the business entities which would likely be affected:	Number likely to be affected <sup>1</sup>	Item	Itemized Cost
Privately-owned active or abandoned dry cleaning facilities requesting reimbursement from the Drycleaning Environmental Response Trust Fund	400	Claims preparation and submittal	\$ 43,956
		<b>Total private entity compliance cost</b>	<b>\$ 43,956</b>

<sup>1</sup>All privately-owned active and abandoned dry cleaning facilities that used solvents to clean garments are potentially affected by this rule. As of November 2003, the Missouri Department of Natural Resources has approximately 375 privately-owned dry cleaning facilities registered in the Hazardous Waste Program Fees and Taxes database. There are 125 abandoned sites known to exist. Of this entire universe, it is assumed for the purpose of this fiscal note that 400 privately-owned active and abandoned dry cleaner facilities will request reimbursement from the Drycleaning Environmental Response Trust Fund.

III. WORKSHEET

- Personnel costs for merit employees are calculated using the Market Rate step of the fiscal year 2004 merit schedule produced by the Missouri Commission on Management and Productivity (COMAP). Monthly salaries are multiplied by 12 to obtain an annual cost. The annual cost is multiplied by a factor of 31.8% with the additional amount added to the annual salary to account for fringe benefits. \$6,617 is added for expense and equipment costs. This sum is then multiplied by 26.4% and the additional amount added to account for indirect costs. Hourly costs are found by dividing the adjusted annual costs by 2080, the number of hours for a Full-Time Equivalent (FTE). All adjustment factors are based on current information confirmed by the hazardous waste program budget staff. Calculations for estimating the personnel costs of private entity employees are based on the same assumptions as for merit employees. Using this formula and the appropriate salaries, the following hourly rates are assumed to be the most accurate for purposes of this fiscal note:

Environmental Specialist IV hourly rate                      -                      \$ 41.75

Geologist II hourly rate	=	\$ 38.71
Environmental Specialist III hourly rate		\$ 36.63
Management Analysis Specialist I hourly rate	=	\$ 34.53
Administrative Office Support Assistant	-	\$ 25.69

- The universe of affected entities is based upon the experience of staff of the Missouri Department of Natural Resources. Entities affected are privately-owned active and abandoned dry cleaning facilities having contamination and having been approved for participation in the Drycleaning Environmental Response Trust Fund. Based upon the experience of department staff, it is assumed that 80% or 400 of the 500 privately-owned active and abandoned dry cleaning facilities will be applying to the Drycleaning Environmental Response Trust Fund and will be requesting reimbursement from the fund.
- Claims preparation and submittal costs.** As noted in the assumption above, the department assumes that 400 of the 500 privately-owned active and abandoned cleaner facilities will be applying for participation in the Drycleaning Environmental Response Trust Fund and will be preparing request for claims reimbursement. Private entity costs for purposes of this fiscal note include the costs incurred by the private entity to comply with the requirements of the rule.

Private entity compliance costs: The cost for an owner or operator of an active or abandoned dry cleaning facility to compile and submit their receipts requesting claims reimbursement as required in this rule is estimated at an average of 3 hours. It is assumed that the compilation of receipts for submittal to the department will be performed by an individual equivalent to an Environmental Specialist III, with an appropriate hourly rate.

Environmental Specialist III hourly rate – \$36.63 per hour

\$ 36.63 x 3 hours – \$ 109.89 estimated cost per claims submittal

\$ 109.89 x 400 facilities = \$ 43,956

**Total cost of compliance for private entities = \$ 43,956**

#### IV. ASSUMPTIONS

- The total estimated cost is provided based on the number of active and abandoned facilities known to the department.
- The universe of affected entities is based upon the experience of staff of the Missouri Department of Natural Resources. Entities affected are active and abandoned dry cleaning facilities that used solvents to clean garments and having a reportable release or suspected release to the environment. Department staff assume that spill reports at dry cleaning facilities will increase due to the requirement in this rule to report releases or suspected releases. It is assumed that this information provides a fair and accurate estimate of the universe of active and abandoned dry cleaner facilities subject to the requirements of this rule.
- The department does not have previous cleanup costs documented for dry cleaning sites, therefore, our cost estimates are based on research of cleanups of dry cleaning facilities conducted in states bordering Missouri.
- Estimates assume a constant regulatory context, which requires no reporting standards beyond those currently required or imposed by this rulemaking.
- Estimates assume there will be no new or sudden changes in technology, which would influence costs.
- This fiscal note is not in lieu of the requirements or a model for compliance with this rule. The examples used for cost calculations are good faith estimates and averages using the department's professional judgement.
- Affected entities are assumed to be in compliance with all applicable environmental laws and regulations.

**Title 10—DEPARTMENT OF NATURAL RESOURCES  
Division 25—Hazardous Waste Management Commission  
Chapter 17—Dry-Cleaning Environmental Response  
Trust Fund**

**PROPOSED RULE**

**10 CSR 25-17.160 Notification of Abandoned Sites**

*PURPOSE: This rule describes the requirements for the notification of abandoned dry cleaning sites.*

(1) Owners or former operators of abandoned dry cleaners shall inform the department of the existence of an abandoned dry cleaning facility on a form provided by the department. Any available evidence that the property once contained a dry cleaning facility shall accompany the form.

(2) This form shall be postmarked by July 1, 2004.

*AUTHORITY: sections 260.905 and 260.925, RSMo 2000. Original rule filed April 15, 2004.*

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

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

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this proposed rule and others beginning at 9:00 a.m. on June 16, 2004 at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any person wishing to speak at the hearing shall send a written request to the Secretary of the Hazardous Waste Management Commission at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written requests to speak must be postmarked by midnight on June 2, 2004. Faxed or e-mailed correspondence will not be accepted.*

*Any person may submit written comments on this proposed rule. Written comments shall be sent to the Director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written comments must be postmarked by midnight on June 25, 2004. Faxed or e-mailed correspondence will not be accepted.*

*Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program, at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.*

**Title 10—DEPARTMENT OF NATURAL RESOURCES  
Division 25—Hazardous Waste Management Commission  
Chapter 17—Dry-Cleaning Environmental Response  
Trust Fund**

**PROPOSED RULE**

**10 CSR 25-17.170 Violations of Dry Cleaning Remediation Laws**

*PURPOSE: This rule describes the violations and penalties for violation of the dry cleaning regulations.*

(1) The department may bring civil damages not to exceed five hundred dollars (\$500) for each violation, against a participant of a dry cleaning facility for the following:

(A) For operation of an active dry cleaning facility in violation of 10 CSR 25-17.010 through 10 CSR 25.17.170, or operate an active

dry cleaning facility in violation of any other applicable federal or state environmental statutes, rules or regulations;

(B) Prevent or hinder a properly identified officer or employee of the department or other authorized agent of the director from entering, inspecting, sampling or responding to a release at reasonable times and with reasonable advance notice to the operator as authorized by section 260.910, RSMo;

(C) Knowingly make any false material statement or representation in any record, report or other document filed, maintained or used for the purpose of compliance with 10 CSR 25-17.040;

(D) Knowingly destroy, alter or conceal any record required to be maintained by 10 CSR 25-17.040; and

(E) Willfully allow a release in excess of a reportable quantity or knowingly fail to make an immediate response to a release in accordance with 10 CSR 25-17.050.

*AUTHORITY: sections 260.905 and 260.910, RSMo 2000. Original rule filed April 15, 2004.*

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

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

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this proposed rule and others beginning at 9:00 a.m. on June 16, 2004 at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any person wishing to speak at the hearing shall send a written request to the Secretary of the Hazardous Waste Management Commission at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written requests to speak must be postmarked by midnight on June 2, 2004. Faxed or e-mailed correspondence will not be accepted.*

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

**PROPOSED RESCISSION**

**12 CSR 10-4.340 Dual Operators.** This rule indicated when a contractor was considered a dual operator and set forth the procedures to be used by the dual operator to determine when purchases became subject to use tax. Examples were given for clarification purposes.

*PURPOSE: This rule is being rescinded because it is superseded by other rules.*

*AUTHORITY: section 144.705, RSMo 1994. Original rule filed October 15, 1985, effective March 24, 1986. Rescinded: Filed April 14, 2004.*

*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 the proposed rescission with the Department of Revenue, Office of Legislation and Regulations, PO Box 629, Jefferson City, MO 65105. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**Title 13—DEPARTMENT OF SOCIAL SERVICES**  
**Division 70—Division of Medical Services**  
**Chapter 15—Hospital Program**

**PROPOSED RULE**

**13 CSR 70-15.190 Out-of-State Hospital Services Reimbursement Plan**

*PURPOSE:* This rule establishes the method of reimbursing out-of-state hospitals for inpatient or outpatient care provided to any recipients of Missouri Medicaid, whether they are under age twenty-one (21) or age twenty-one (21) and over.

(1) Covered inpatient hospital services include those items and services allowed by the Medicaid State Plan including medically necessary care in a semi-private room. If prior authorized Missouri Medicaid may reimburse for a private room if it is certified medically necessary by a physician to avoid jeopardizing the health of the patient or to protect the health and safety of other patients. No payment will be made for any portion of the room charge when the recipient requests and is provided a private room when the private room is not medically necessary.

(2) Payment for authorized inpatient hospital services shall be made on a prospective per diem basis for services provided outside Missouri if the services are covered by the Missouri Medical Assistance (Medicaid) Program. To be reimbursed for furnishing services to Missouri Medicaid recipients, out-of-state providers must complete a Missouri Medical Assistance Program Provider Participation Application and have the application approved by the Missouri Department of Social Services, Division of Medical Services.

(3) Determination of Payment. The payment for inpatient hospital services provided by an out-of-state provider shall be the lowest of:

(A) At the out-of-state hospital's election, the prospective inpatient payment may be based on information from the hospital's Medicare base year cost report and all financial documentation required by Missouri regulations for hospitals operating in Missouri with inflationary increases as granted by the Missouri General Assembly or the out-of-state hospital may be exempt from the cost report filing requirements if the hospital accepts the projected statewide average per diem rate for Missouri hospitals as calculated by the Department of Social Services, Division of Medical Services for the state fiscal year in which the service was provided. The effective date for any increase above the statewide average per diem rate for Missouri hospitals shall be the first day of the month following the Division of Medical Services determination of per diem rate based on information from the hospital's Medicare base year cost report and all financial documentation required by Missouri regulation for hospitals operating in Missouri;

(B) The amount of total charges billed by the hospital. The provider's billed charges must be their usual and customary charges for services; or

(C) The Medicare deductible or coinsurance, if applicable, up to the amount allowed by the Missouri Medicaid program.

(4) Per Diem Reimbursement Rate Computation. The per diem reimbursement rate computation is the same as calculated for Missouri hospitals at 13 CSR 70-15.010(3).

(5) If a provider fails to submit all financial documentation required by Missouri regulations (Medicare cost report, working trial balance, audited financial statements, Medicaid supplemental schedules, and Worksheet C2552-83 for ancillary costs and charges) for hospitals operating in Missouri within thirty (30) days of making the election to receive payment based on information from cost reports, the payment shall be based on the projected statewide average per diem rate in Missouri as developed by the Department of Social Services, Division of Medical Services for the state fiscal year.

(6) Out-of-state hospitals shall present claims to Missouri Medicaid within three hundred sixty-five (365) days from the date of service. In no case shall Missouri be liable for payment of a claim received beyond one (1) year from the date services were rendered. Inpatient and outpatient hospital services must be submitted on the UB-92 claim form.

(7) Out-of-state hospitals are subject to the Department Concurrent Hospital Review process (utilization review) for all non-emergency services.

(8) The payment for authorized outpatient hospital services provided by an out-of-state hospital shall be the lowest of:

(A) At the out-of-state hospital's election, a prospective outpatient payment percentage calculated using the Medicaid over-all outpatient cost-to-charge ratio from the fourth, fifth, and sixth prior base year cost reports and all documentation required by Missouri regulation for hospitals operating in Missouri regressed to the current state fiscal year or the out-of-state hospital may be exempt from the cost report filing requirement if the hospital accepts the projected statewide average outpatient payment percentage as developed by the Department of Social Services, Division of Medical Services for the state fiscal year in which the service was provided. The effective date for any increase above the statewide average outpatient payment percentage shall be the first day of the month following the Division of Medical Services determination of the outpatient payment percentage based on information from the hospital's Medicare base year cost report and all financial documentation required by Missouri regulation for hospitals operating in Missouri; or

(B) The amount of total charges billed by the hospital.

(9) Outpatient Reimbursement Rate Computation. The outpatient reimbursement rate computation is the same as calculated for Missouri hospitals at 13 CSR 70-15.160.

(10) Disproportionate Share Providers. Out-of-state hospitals do not qualify for disproportionate share (DSH) payments unless they have a low income utilization rate exceeding twenty-five percent (25%) for Missouri residents and the out-of-state hospital can demonstrate that the provision of services to Missouri residents has not been considered in establishing their DSH status in any other state.

(11) All Medicaid services are subject to program compliance reviews. Reviews can be performed before services are furnished, after services are furnished and before payment is made, or after payment is made.

(12) Regardless of changes of ownership, management, control, operation, leasehold interests by whatever form for any hospital previously certified for participation in the Medicaid program, the department will continue to make all the Title XIX payments directly to the entity with the hospital's current provider number and hold the entity with the current provider number responsible for all Medicaid liabilities.

(13) Participation in the Missouri Medicaid program shall be limited to hospitals who accept as payment in full for covered services rendered to Medicaid recipients the amount paid in accordance with Missouri statute and regulations.

(14) Definitions.

(A) The definitions from regulation 13 CSR 70-15.010 are incorporated as 13 CSR 70-15.190.

(B) Base year cost report—shall be either a 1995 Medicare cost report and Missouri's supplemental cost report schedules for those hospitals enrolled in the Missouri Medicaid program as of the effective date of this regulation or the most recent submitted cost report to Medicare and Missouri's supplemental cost report schedules for those hospitals that elect to enroll in Missouri Medicaid after the effective date of this regulation.

(C) Out-of-state—not within the physical boundaries of Missouri.

(D) Usual and customary charge—the amount which the individual provider charges the general public in the majority of cases for a specific procedure or service.

*AUTHORITY: section 208.201, RSMo 2000. Original rule filed April 15, 2004.*

*PUBLIC COST: This proposed rule will cost state agencies or political subdivisions \$4,665,800 annually over the life of the rule.*

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

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

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

Rule Number and Name:	13 CSR 70-15.190 Out-of-State Hospital Services Reimbursement Plan
Type of Rulemaking:	Proposed Rule

**II. SUMMARY OF FISCAL IMPACT**

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Department of Social Services Division of Medical Services	\$4,665,800 annually over the life of the rule

**III. WORKSHEET**

Out-of-state covered days (age less than 21)	4,900		
Average in-state per-diem		\$852.73	\$4,178,377
Current payment		\$660.89	<u>-3,238,361</u>
			<u>\$ 940,016</u>
Out-of-state covered days (age 21 and older)	7,340		
Average in-state per-diem		\$852.73	\$6,259,038
Current payment		\$345.13	<u>-2,533,254</u>
			<u>\$3,725,784</u>
Estimated Annual Impact			<u>\$4,665,800</u>

**IV. ASSUMPTIONS**

This rule increases the prospective inpatient per diem payment for Missouri Medicaid recipients under age twenty-one (21) treated in hospitals located out-of-state from \$660.89 to at least the projected statewide average per-diem rate for Missouri hospitals (\$852.73 in SFY 2004) or the per-diem payment as calculated from the hospital's Medicare base year cost report and all financial documentation required by Missouri regulations for hospitals operating in Missouri.

This rule increases the prospective inpatient per-diem payment for Missouri Medicaid recipients age twenty-one (21) or older treated in hospitals located out-of-state from \$345.13 to at least the projected statewide average per-diem rate for Missouri hospitals (\$852.73 in SFY 2004) or the per diem payment as calculated from the hospital's Medicare base year cost report and all financial documentation required by Missouri regulations for hospitals operating in Missouri.

**Title 15—ELECTED OFFICIALS  
Division 30—Secretary of State  
Chapter 51—Broker-Dealers, Agents,  
Investment Advisers, and  
Investment Adviser Representatives**

**PROPOSED AMENDMENT**

**15 CSR 30-51.170** [Denial, Revocation and Suspension of Registration] *Dishonest or Unethical Business Practices by Broker-Dealers and Agents.* The commissioner is amending the title, the Purpose and section (1) and adding a new section (2).

*PURPOSE: The purpose of this amendment is to clarify the dishonest or unethical practices of broker-dealers and agents.*

*PURPOSE: This rule [prescribes grounds for the denial, revocation or suspension of the registration of] identifies dishonest or unethical business practices for broker-dealers[,] or agents [and investment advisers].*

(1) Grounds for the [denial, revocation and suspension of registration] **discipline or disqualification of broker-dealers or agents** shall include, in addition to other grounds specified in section 409.4-412(d) of the Missouri Securities Act of 2003 (the Act), the following “dishonest or unethical practices in the securities business”:

(D) [Willful switching, churning, overtrading or reloading of securities in a customer’s account for the purpose of accumulating or compounding commission or i] Inducing trading in a customer’s account [which] **that** is excessive in size or frequency in view of the financial resources and character of the account **for the purpose of accumulation or compounding commissions;**

(E) Recommending to a customer the purchase, sale or exchange of any security without reasonable grounds to believe that this transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer’s investment objectives, financial situation and needs, and any other relevant information known by the [applicant or registrant] **broker-dealer or agent;**

(H) Making false, misleading, deceptive, exaggerated or flamboyant representations or predictions in the solicitation or sale of a security, as, for example:

1. That the security will be resold or repurchased;
2. That it will be listed or traded on an exchange or established market;
3. That it will result in an assured, immediate or extensive increase in value, future market price or return on investment;
4. With respect to the issuer’s financial condition, anticipated earnings, potential growth or success;
5. That there is a guarantee against risk or loss; or
6. A [R]representation that a security is being offered to a customer at the market or a price related to the market price, unless the [applicant or registrant] **broker-dealer or agent** knows or has reasonable grounds to believe that—

A. A market for the security exists other than that made, created or controlled by the [applicant or registrant] **broker-dealer or agent**, or by any person for whom s/he is acting or with whom s/he is associated in the distribution, or any person controlled by, controlling or under common control with the [applicant or registrant] **broker-dealer or agent;** [and] or

B. The security is traded in an established securities market, and the fact that the [applicant or registrant] **broker-dealer or agent** is in a control position with respect to the market for that security is fully disclosed to the investor;

(I) Failing to disclose a dual agency capacity or effecting transactions upon terms and conditions other than those stated per confirmations; or failing to disclose that the [applicant or registrant] **broker-dealer or agent** is controlled by, controlling, **receiving com-**

**ensation from**, affiliated with or under common control with the issuer of any security before entering into any contract with or for a customer for the purchase or sale of the security, or if this disclosure is not made in writing, failing to give or send a written disclosure at or before the completion of the transaction;

[(M)] *Operating a securities business while being unable to meet current liabilities, or violating any rule or order relating to minimum capital, bond, recordkeeping and reporting requirements, or provisions concerning use, commingling or hypothecation of securities;*

[(N)](M) Failing or refusing to furnish a customer, upon reasonable request, information to which s/he is entitled, or to respond to a formal written reprimand or complaint;

[(O)](N) Extending, arranging for, or participating in arranging for credit to a customer in violation of the regulations of the Securities and Exchange Commission or the regulations of the Federal Reserve Board;

[(P)](O) [Executing a transaction in a margin account without securing] **Failing to secure** from the customer a properly executed written margin agreement [, including, but not limited to, written authorization for] **that authorizes** the existence of the margin account [, within ten (10) days] **promptly** after the initial transaction in the account;

(P) **Failing to segregate customers’ free securities or securities held in safekeeping;**

(R) Charging unreasonable and inequitable fees for services performed, including miscellaneous services such as collection of mon/eys/ies due for principal, dividends or interest, exchange or transfer of securities, appraisals, safekeeping or custody of securities, and other services related to its securities business;

(S) Offering to buy from or sell to any person any security at a stated price unless the [applicant or registrant] **broker-dealer or agent** is prepared to purchase or sell, as the case may be, at a price and under the conditions as are stated at the time of the offer to buy or sell;

(U) Publishing or circulating or causing to be published or circulated, any notice, circular, advertisement, newspaper article, investment service or communication of any kind which purports to report any transaction as a purchase or sale of any security unless the [applicant or registrant] **broker-dealer or agent** believes that the transaction was a bona fide purchase or sale of this security; or which purports to quote the bid or asked price for any security, unless the [applicant or registrant] **broker-dealer or agent** believes that the quotation represents a bona fide bid for, or offer of, the security; or using any advertising or sales material in such a fashion as to be deceptive or misleading, such as the distribution of any nonfactual datum, material or presentation based on conjecture, unfounded or unrealistic claims or assertions in any brochure, flyer, or display by words, pictures, graphs or otherwise, designed to supplement, detract from, supersede or defeat the purpose or effect of any prospectus or disclosure;

(W) Sharing, by an agent, directly or indirectly, in profits or losses in the account of any customer without the written authorization of the customer and the broker-dealer [an] **the agent** represents;

[(Z)] *Failing to disclose any investor, in connection with the solicitation of a securities purchase when the market value of the security is not reported in a bona fide newspaper as described in subsection (1)(Y), the value the purchaser would receive if the purchaser would resell the securities at the same instant the purchase is effected, unless the purchaser would receive at least one hundred percent (100%) of the amount paid for the initial purchase;*

[(AA)](Z) In connection with the solicitation of a sale or purchase of an Over the Counter (OTC) non-National Association of Securities Dealers Automated Quotation (NASDAQ) security, failing to promptly provide the most current prospectus or the most recently filed periodic report filed under Section 13 of the Securities Exchange Act when requested to do so by a customer;

*[(BB)](AA)* Marking any order tickets or confirmations as unsolicited when in fact the transaction was solicited;

*[(CC)]* Failing to disclose, on each statement of account sent to account holders having a designated security shown as a long position in the person's account as of the statement date, the price at which the broker-dealer is offering to buy the security or, if no price is available, the average of the bid prices by other dealers and the date of the most recent bid available from the broker-dealer and the amount of money represented by the long position, if it were to be sold at the bid price shown on the statement, provided, however, this requirement applies only to accounts holding a designated security acquired in non-exempt transactions effected on or after October 1, 1990 in designated securities as set forth in 15 CSR 30-51.169(1)(F), which were acquired through the broker-dealer presently holding the account or a predecessor broker-dealer;]

*[(DD)](BB)* Failing to comply with any applicable provision of the Conduct Rules of the National Association of Securities Dealers, or any applicable fair practice or ethical standard promulgated by the Securities and Exchange Commission or by a self-regulatory organization approved by the Securities and Exchange Commission;

*[(EE)](CC)* Engaging in any acts or practices enumerated in 15 CSR 30-51.169; and

**(DD) Aiding or abetting any of the acts or practices enumerated in this rule.**

*[(FF)]* For an investment adviser, paying solicitor fees if such fees aren't paid in accordance with 15 CSR 30-51.145(1), charging performance based fees that are not in accordance with 15 CSR 30-51.145(2), or having custody or possession of a client's funds and/or securities if such custody or possession is not maintained in accordance with 15 CSR 30-51.100.]

**(2) The conduct set forth above is not inclusive. Engaging in other conduct such as nondisclosure or incomplete disclosure of material fact, or other deceptive practices are dishonest or unethical business practices.**

*AUTHORITY:* sections 409.4-412 and 409.6-605, RSMo Supp. 2003. Original rule filed June 25, 1968, effective Aug. 1, 1968. For intervening history, please consult the *Code of State Regulations*. Amended: Filed April 8, 2004.

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

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

*NOTICE TO SUBMIT COMMENTS:* Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Secretary of State's Office, Doug Ommen, Commissioner of Securities, 600 West Main Street, Jefferson City, MO 65101. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**Title 15—ELECTED OFFICIALS  
Division 30—Secretary of State  
Chapter 51—Broker-Dealers, Agents,  
Investment Advisers, and  
Investment Adviser Representatives**

## PROPOSED RULE

### 15 CSR 30-51.172 Dishonest or Unethical Business Practices by Investment Advisers and Investment Adviser Representatives

*PURPOSE:* This rule identifies dishonest or unethical business practices for investment advisers or investment adviser representatives.

(1) Grounds for the discipline or disqualification of investment advisers or investment adviser representatives (adviser) shall include, in addition to other grounds specified in section 409.4-412(d) of the Missouri Securities Act of 2003 (the Act), the following "dishonest or unethical practices in the securities business."

(A) Recommending to a client to whom investment, supervisory, management, or consulting service are provided that he/she purchase, sell, or exchange any security when the adviser does not have reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's overall portfolio, investment objectives, financial situation and needs, investment experience, and any other information known by the adviser;

(B) Inducing trading in a client's account when:

1. The size or frequency of such trading is excessive given the financial resources, investment objectives, and character of the account; and

2. The adviser directly benefits from the number of securities transactions effected in a client's account;

(C) Ordering the purchase or sale of a security for a client's account without authority to do so;

(D) Ordering the purchase or sale of a security for a client's account upon a third-party's instruction without first receiving the client's third-party trading authorization in writing;

(E) Establishing fictitious accounts in order to execute transactions, which would otherwise be prohibited;

(F) Exercising any discretionary power in ordering the purchase or sale of securities for a client without first obtaining the client's written discretionary authority within ten (10) business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both;

(G) Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment adviser, or a financial institution engaged in the business of loaning funds;

(H) Lending money to a client unless the investment adviser is a financial institution engaged in the business of lending funds or the client is an affiliate of the adviser;

(I) Failing to furnish to a client purchasing securities in an offering, no later than the date of confirmation of the transaction, either a final prospectus or a preliminary prospectus and an additional document, which together include all information set forth in the final prospectus, or making oral or written statements contrary to or inconsistent with the disclosures contained in the prospectus;

(J) Misrepresenting to any client or prospective client the qualifications of the adviser or its employees, or to misrepresent the nature of the advisory services being offered or fees to be charged for such services, or to omit to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made, not misleading;

(K) Providing to a client a report or recommendation prepared by someone other than the adviser without also disclosing to the client that someone else prepared that report or recommendation. This prohibition does not apply to an adviser's use of published research reports or statistical analysis when rendering advice, nor when an adviser orders such a report in the normal course of providing service;

(L) Rendering advice to a client before making written disclosure to that client about any material conflict of interest relating to the



adviser, its representative, or any of its employees, when that conflict could reasonably be expected to impair the rendering of unbiased and objective advice including:

1. Compensation arrangements connected with advisory services to clients which are in addition to compensation from those clients for such services; and

2. Charging a client an advisory fee for rendering advice when the adviser or its employees will also receive a commission for executing securities transactions pursuant to that advice;

(M) Failing to disclose to any client or prospective client all material facts with respect to:

1. Any financial condition of the adviser that is reasonably likely to impair the ability of the adviser to meet contractual commitments to clients, if the adviser has discretionary authority (express or implied) or custody over such client's funds, assets, or securities, or requires payment of advisory fees six (6) or more months in advance and in excess of five hundred dollars (\$500) per client; or

2. Any legal or disciplinary event that is material to an evaluation of the adviser's integrity or ability to meet contractual commitments to clients;

(N) Charging a client an unreasonable and inequitable advisory fee in light of the fees charged by other advisers providing essentially the same services;

(O) Paying solicitor fees if such fees are not paid in accordance with 15 CSR 30-51.145(1), charging performance based fees that are not in accordance with 15 CSR 30-51.145(2), or having custody or possession of a client's funds and/or securities if such custody or possession is not maintained in accordance with 15 CSR 30-51.100;

(P) Guaranteeing a client that a specific result will be achieved (gain or no loss) as a result of advice that will be rendered;

(Q) Disclosing the identity, affairs, or investments of any client to any third party unless required by law to do so, or unless consented to by the client;

(R) Entering into, extending or renewing any investment advisory contract, other than a contract for impersonal advisory services, unless such contract is in writing and discloses, in substance:

1. The services to be provided;
2. The term of the contract;
3. The advisory fee or the formula for computing the fee;
4. The amount or the manner of calculation of the amount of the prepaid fee to be returned in the event of contract termination or non-performance;

5. Whether the contract grants discretionary power to the adviser or its representatives; and

6. That no assignment of such contract shall be made by the adviser without the client's consent;

(S) Publishing, circulating, or distributing any advertisement that does not comply with 17 CFR section 275.206(4)-1;

(T) Failing or refusing to furnish a customer, upon reasonable request, information to which s/he is entitled, or to respond to a formal written reprimand or complaint;

(U) Engaging in any conduct or act, either directly or indirectly through any other person, which would violate any applicable professional, fair practice or ethical standard established by state or federal law or regulation; and

(V) Aiding or abetting any of the acts or practices enumerated in this rule.

(2) The conduct set forth above is not inclusive. Engaging in other conduct such as nondisclosure or incomplete disclosure of material fact, or other deceptive practices are dishonest or unethical business practices.

*AUTHORITY: sections 409.4-412 and 409.6-605, RSMo Supp. 2003. Original rule filed April 8, 2004.*

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Secretary of State's Office, Doug Ommen, Commissioner of Securities, 600 West Main Street, Jefferson City, MO 65101. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.*

**Title 15—ELECTED OFFICIALS  
Division 30—Secretary of State  
Chapter 51—Broker-Dealers, Agents,  
Investment Advisers, and  
Investment Adviser Representatives**

**PROPOSED RULE**

**15 CSR 30-51.173 Supervision Guidelines for Investment Advisers**

*PURPOSE: This rule provides guidance for reasonable supervision by investment advisers.*

(1) The phrase "failed reasonably to supervise" under section 409.4-412(d)(9) of the Missouri Securities Act of 2003 (the Act) is a standard allowing each investment adviser (firm) the flexibility to fashion procedures and systems that address its particular organizational and management structure. Yet the following are guidelines that provide guidance to registered investment advisers with two (2) or more employees of factors considered by the commissioner in evaluating reasonable supervision.

(2) The following guidelines shall be factors in considering what is reasonable supervision for any firm, which employs two (2) or more individuals, whether:

(A) The firm has established current procedures and systems for supervising the activities of agents, employees and Missouri office operations that are reasonably designed to achieve compliance with applicable state and federal securities laws and regulations;

(B) The firm has established current procedures and systems that could reasonably be expected to allow a supervisor reasonably discharging his/her supervisory duties under such established procedures to prevent and detect violations of the Act, and the firm regularly reviews these procedures and systems;

(C) The firm has reasonably implemented the procedures and systems referred to in subsections (A) and (B) above;

(D) The firm provides appropriate initial and periodic refresher training to supervisors, employees and representatives regarding the firm's procedures and systems and additional initial and periodic training to supervisors in the procedures and systems referred to in subsections (A) and (B) above;

(E) The firm reasonably follows up on indications of wrongdoing, "red flags." Such red flags may consist of, but are not limited to, activities of unauthorized personnel, churning, unauthorized trading, low level of production but high expenses, garnishment of wages, regulatory actions, prior disciplinary history of one (1) or more customer complaints and recent customer complaints;

(F) The firm has an adequate system to track and monitor the status of customer complaints;

(G) The firm has designated a qualified supervisor of the investment adviser for each representative or employee;

(H) The designated supervisor of employees located in Missouri maintains a principal place of business in Missouri, or in a location that allows the supervisor to visit the premises of supervised agents in Missouri within a reasonable time;

(I) The designated supervisor is responsible for supervising no more representatives at any one (1) time than would allow the supervisor to effectively execute his supervisory duties. The appropriate number of representatives which one (1) person can reasonably supervise is dependent on the nature of the business conducted by the persons supervised, technical resources available to the supervisor, additional personnel available to assist the supervisor, and other resources made available to assist the supervisor;

(J) The firm conducts annual compliance examinations of supervisory locations with effective deficiency and follow-up procedures. Unannounced examinations may be reasonable if there are compliance issues concerning agents or activities;

(K) The firm reasonably audits for compliance including reasonable follow-up and proof, independent of the representative, that mail is reviewed for customer complaints and other red flags;

(L) The firm has and implements procedures and systems for reasonable oversight of supervisors; and

(M) The firm has a reasonable policy for disciplinary and progressive supervisory action, which is reasonably implemented.

*AUTHORITY: sections 409.4-412(d)(9) and 409.6-605, RSMo Supp. 2003. Original rule filed April 8, 2004.*

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Secretary of State's Office, Doug Ommen, Commissioner of Securities, 600 West Main Street, Jefferson City, MO 65101. 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 19—DEPARTMENT OF HEALTH  
AND SENIOR SERVICES  
Division 60—Missouri Health Facilities Review  
Committee  
Chapter 50—Certificate of Need Program**

**PROPOSED AMENDMENT**

**19 CSR 60-50.300 Definitions for the Certificate of Need Process.** The Committee proposes to amend sections (8), (9) and (12).

*PURPOSE: This amendment clarifies previous definitions for terms used in the Certificate of Need (CON) review process.*

(8) Health care facility means those described in section 197.366, RSMo, which replaces section 197.305.7, RSMo.

(9) Health care facility expenditure includes the capital value of new construction or renovation costs, architectural/engineering fees, equipment not in the construction contract, land acquisition costs, consultants'/legal fees, interest during construction, predevelopment costs as defined in section 197.305(13), RSMo, in excess of one hundred fifty thousand dollars (\$150,000) **incurred over a twelve (12)-month period**, any existing land and building converted to medical use for the first time, and any other capitalizable costs as listed on

the "Proposed Project Budget" form MO 580-1863.

(12) Major medical equipment means any piece of equipment and collection of functionally related devices acquired to operate the equipment and additional related costs such as software, shielding, and installation, **acquired over a twelve (12)-month period** with an aggregate cost of one [(1)] million dollars (**\$1,000,000**) or more, when the equipment is intended to provide the following services:

(18) The most current version of Form MO 580-1863 may be obtained by mailing a written request to the Certificate of Need Program (CONP), 915G Leslie Boulevard, Jefferson City, MO 65101, or in person at the CONP Office, or, if technically feasible, by downloading a copy of the form from the CONP website at [[www.dhss.state.mo.us/con](http://www.dhss.state.mo.us/con)] [www.dhss.mo.gov/con](http://www.dhss.mo.gov/con).

*AUTHORITY: section 197.320, RSMo 2000. Original rule filed June 2, 1994, effective Nov. 30, 1994. For intervening history, please consult the Code of State Regulations. Amended: Filed April 12, 2004.*

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

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

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support or in opposition to this proposed amendment with Thomas R. Piper, Director, Certificate of Need Program, 915G Leslie Blvd., Jefferson City, MO 65101. To be considered, comments must be received by 5:00 p.m. on June 17, 2004. A public hearing has been scheduled for June 17, 2004, at 10:00 a.m. at the Certificate of Need Program Office located at 915G Leslie Blvd., Jefferson City, Missouri.*

**Title 19—DEPARTMENT OF HEALTH  
AND SENIOR SERVICES  
Division 60—Missouri Health Facilities Review  
Committee  
Chapter 50—Certificate of Need Program**

**PROPOSED AMENDMENT**

**19 CSR 60-50.400 Letter of Intent Process.** The Committee proposes to amend sections (1), (2), (3), (4) and (5).

*PURPOSE: This amendment clarifies the process for submitting a Letter of Intent to begin the Certificate of Need (CON) review process and further outlines the projects subject to CON review.*

(1) Applicants shall submit a Letter of Intent (LOI) package to begin the Certificate of Need (CON) review process at least thirty (30) days prior to the submission of the CON application and will remain valid in accordance with the following time frames:

(A) For full reviews, expedited equipment replacements, expedited long-term care (LTC) renovation or modernization reviews and expedited LTC facility replacement reviews, [*an*] a LOI is valid for six (6) months;

(B) For expedited LTC bed expansion reviews in accordance with section 197.318.8, RSMo, [*an*] a LOI is valid for twenty-four (24) months; and

(C) For non-applicability reviews, [*an*] a LOI is valid for six (6) months.

(2) Once filed, [*an*] a LOI may be amended, except for project address, not later than ten (10) days in advance of the CON application filing, or it may be withdrawn at any time without prejudice.

(3) A LTC bed expansion or replacement as *[defined in these rules includes all of the provisions]* sought pursuant to section 197.318.8 through 197.318.10, RSMo, *[requiring]* requires a CON application, but *[allowing]* allows for shortened information requirements and review time frames. When *[an]* a LOI for *[an]* a LTC bed expansion, except replacement(s), is filed, the **Certificate of Need Program (CONP)** staff shall immediately request certification for that facility of average licensed bed occupancy and final Class 1 patient care deficiencies for the most recent six (6) consecutive calendar quarters by the Division of *[Health Standards and Licensure (DHSL)]* Senior Services and Regulation (DSSR), Department of Health and Senior Services, through *[an]* a LTC Facility Expansion Certification (Form MO 580-2351) to verify compliance with occupancy and deficiency requirements pursuant to section 197.318.8, RSMo. Occupancy data shall be taken from the *[DHSL's]* DSSR's most recently published *[Quarterly Survey]* **Six-Quarter Occupancy of [Hospital and Nursing Home] Intermediate Care and Skilled Nursing Facility** (or Residential Care Facility) *[Bed Utilization]* **Licensed Beds** reports. For LTC bed expansions or replacements, the sellers and purchasers shall be defined as the owner(s) and operator(s) of the respective facilities, which includes building, land, and license. On the Purchase Agreement (Form MO 580-2352), both the owner(s) and operator(s) of the purchasing and selling facilities should sign.

(4) The *[Certificate of Need Program (CONP)]* staff, as an agent of the Missouri Health Facilities Review Committee (*[c]*/Committee), will review LOIs according to the following provisions:

(F) A CON application must be made if:

1. The project involves the development of a new *[health care facility]* **hospital costing *[in excess of]* one *[(1)]* million dollars (\$1,000,000) or more, except for a facility licensed under Chapter 197, RSMo, meeting the requirements described in 42 CFR, section 412.23(e);**

2. The project involves the acquisition or replacement of major medical equipment in any setting not licensed under Chapter 198, RSMo, costing *[in excess of]* one *[(1)]* million dollars **(\$1,000,000) or more;**

3. The project involves the acquisition or replacement of major medical equipment for a health care facility licensed under Chapter 198, RSMo, costing *[in excess of]* four hundred thousand dollars **(\$400,000) or more;**

4. The project involves the acquisition of any equipment or beds in a long-term care hospital meeting the requirements found in 42 CFR section 412.23(e) at any cost;

5. The project involves a capital expenditure **for renovation, modernization or replacement**, but not additional beds, by or on behalf of an existing health care facility licensed under Chapter 198, RSMo, costing *[in excess of one (1) million dollars]* **six hundred thousand dollars (\$600,000) or more; *[or]***

6. *[Prior to January 1, 2003, the]* **The project involves either additional *[long-term care]* LTC (licensed or certified residential care facility I or II, intermediate care facility, or skilled nursing facility) beds or LTC bed expansions or replacements licensed under Chapter 198, RSMo, as defined in section (3) above of this rule, *[regardless of cost with certain exemptions and exceptions.]* costing **six hundred thousand dollars (\$600,000) or more; or****

7. **The project involves the expansion of an existing health care facility as described in subdivisions (1) and (2) of section 197.366, RSMo, that either:**

A. **Costs six hundred thousand dollars (\$600,000) or more; or**

B. **Exceeds ten (10) beds or ten percent (10%) of that facility's existing licensed capacity, whichever is less; and**

(G) **An exception may exist if the LOI test verifies that the proposed new long-term care beds (excluding long-term care hospi-**

**tal beds) cost less than six hundred thousand dollars (\$600,000) or do not exceed ten (10) beds or ten percent (10%) of that facility's existing licensed capacity, whichever is less, and the proposed beds are in the same licensure category as the existing facility's license.**

(5) For *[an]* a LTC bed expansion proposal pursuant to section 197.318.8(1)(e), RSMo, the CONP staff shall request occupancy verification by the *[DHSL]* DSSR who shall also provide a copy to the applicant.

*AUTHORITY:* section 197.320, RSMo 2000. Original rule filed June 2, 1994, effective Nov. 30, 1994. For intervening history, please consult the *Code of State Regulations*. Amended: Filed April 12, 2004.

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

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

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS:* Anyone may file a statement in support or in opposition to this proposed amendment with Thomas R. Piper, Director, Certificate of Need Program, 915G Leslie Blvd., Jefferson City, MO 65101. To be considered, comments must be received by 5:00 p.m. on June 17, 2004. A public hearing has been scheduled for June 17, 2004, at 10:00 a.m. at the Certificate of Need Program Office located at 915G Leslie Blvd., Jefferson City, Missouri.

**Title 19—DEPARTMENT OF HEALTH  
AND SENIOR SERVICES  
Division 60—Missouri Health Facilities Review  
Committee  
Chapter 50—Certificate of Need Program**

**PROPOSED AMENDMENT**

**19 CSR 60-50.420 Review Process.** The Committee proposes to amend sections (3), (4), (5), (6), (7), (8), (9), (10) and (11).

*PURPOSE:* This amendment clarifies the process for submitting a Certificate of Need (CON) application for a CON review, and removes unneeded provisions.

(3) All filings must occur at the principal office of the *[c]*/Committee during regular business hours. The CONP staff, as an agent of the *[c]*/Committee, shall provide notification of applications received through publication of the Application Review Schedule (schedule), as follows:

(A) For full applications, the schedule shall include the filing date of the application, a brief description of the proposed service, the time and place for filing comments and requests for a public hearing, and the tentative date of the meeting at which the application is scheduled for review. Publication of the schedule shall occur on the next business day after the filing deadline. The publication of the schedule is conducted through the following actions:

1. The schedule shall be submitted to the secretary of state's office for publication in the next regularly scheduled *Missouri Register*;

2. A press release about the CON application schedule shall be sent *[to]* by e-mail to all legislators and all newspapers of general circulation in Missouri as supplied by the **Office of Public Information**, Department of Health and Senior Services (DHSS), *[Office of Public Information]*;

3. The schedule shall be posted on the CON website; and

4. The schedule shall be *[mailed]* e-mailed to all affected persons who have registered with the CONP staff as having an interest in such CON applications.

(B) For expedited applications the schedule shall include the filing date of the application, a brief description of the proposed service, including the name and location of all participating facilities, the time and place for filing comments and requests for a public hearing, and the tentative decision date for the application. Publication of the schedule shall occur on the next business day after the filing deadline. The publication of the schedule is conducted through the following actions:

1. The schedule shall be submitted to the secretary of state's office for publication in the next regularly scheduled *Missouri Register*; and

2. The schedule shall be posted on the CON website.

(C) For non-applicability reviews, the listing of non-applicability letters to be confirmed shall be posted on the CON website at least twenty (20) days prior to each scheduled meeting of the committee where confirmation is to take place.

*[(4) When an application for a full review is filed pursuant to section 197.318.1, RSMo, the CONP staff shall immediately request certification of licensed and available bed occupancy and deficiencies for each of the most recent four (4) consecutive calendar quarters in the county and fifteen (15)-mile radius by the DHSS.]*

*[(5)] (4)* The CONP staff shall review CON applications relative to the Criteria and Standards in the order filed.

*[(6)] (5)* The CONP staff shall notify the applicant in writing regarding the completeness of a full CON application within fifteen (15) calendar days of filing or within five (5) working days for an expedited application.

*[(7)] (6)* Verbal information or testimony shall not be considered part of the application.

*[(8)] (7)* Subject to statutory time constraints, the CONP staff shall send its written analysis to the committee as follows:

(A) For full CON applications, the CONP staff shall send the analysis twenty (20) days in advance of the first committee meeting following the seventieth day after the CON application is filed. The written analysis of the CONP staff shall be sent to the applicant no less than fifteen (15) days before the meeting.

(B) For expedited applications which meet all statutory and rules requirements and which have no opposition, the CONP staff shall send its written analysis to the committee and the applicant within two (2) working days following the expiration of the thirty (30)-day public notice waiting period or the date upon which any required additional information is received, whichever is later.

(C) For expedited applications which do not meet all statutory and rules requirements or those which have opposition, they will be considered at the earliest scheduled committee meeting where the written analysis by the CONP staff can be sent to the Committee and the applicant at least seven (7) days in advance.

*[(9)] (8)* See rule 19 CSR 60-50.600 for a description of the CON decision process.

*[(10)] (9)* An applicant may withdraw an application without prejudice by written notice at any time prior to the committee's decision. Later submission of the same application or an amended application shall be handled as a new application with a new fee.

*[(11)] (10)* In addition to using the Community Need Criteria and Standards as guidelines, the committee may also consider other factors to include, but not be limited to, the number of patients requiring

treatment, the changing complexity of treatment, unique obstacles to access, competitive financial considerations, or the specialized nature of the service.

*AUTHORITY: section 197.320, RSMo 2000. Emergency rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Original rule filed Aug. 29, 1997, effective March 30, 1998. For intervening history, please consult the Code of State Regulations. Amended: Filed April 12, 2004.*

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

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

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support or in opposition to this proposed amendment with Thomas R. Piper, Director, Certificate of Need Program, 915G Leslie Blvd., Jefferson City, MO 65101. To be considered, comments must be received by 5:00 p.m. on June 17, 2004. A public hearing has been scheduled for June 17, 2004, at 10:00 a.m. at the Certificate of Need Program Office located at 915G Leslie Blvd., Jefferson City, Missouri.*

**Title 19—DEPARTMENT OF HEALTH AND  
SENIOR SERVICES  
Division 60—Missouri Health Facilities Review  
Committee  
Chapter 50—Certificate of Need Program**

**PROPOSED AMENDMENT**

**19 CSR 60-50.450 Criteria and Standards for Long-Term Care.** The committee proposes to amend sections (1)–(5), delete section (6) and renumber and amend the remaining sections.

*PURPOSE: This amendment clarifies the criteria and standards against which any project involving a long-term care facility would be evaluated in a Certificate of Need (CON) review, and removes unneeded provisions.*

(1) *[All additional long-term care (LTC) beds in nursing homes, hospitals, and residential care facilities (RCF), and beds in long-term acute hospitals are subject to the LTC bed minimum occupancy requirements (MOR) pursuant to sections 197.317 and 197.318(1), RSMo, with certain exemptions and exceptions pursuant to sections 197.305(7) and 197.312, RSMo, and LTC bed expansions and replacements pursuant to sections 197.318.8 through 197.318.10, RSMo.] For purposes of determining need and evaluating area occupancy, residential care facility (RCF) I and RCF II shall be one separate classification and intermediate care facility (ICF) and skilled nursing facility (SNF) shall be another separate classification.*

(2) *[The MOR for additional LTC beds pursuant to section 197.318.1, RSMo, shall be met if the average occupancy for all licensed and available LTC beds located within the county and within fifteen (15) miles of the proposed site exceeded ninety percent (90%) during at least each of the most recent four (4) consecutive calendar quarters at the time of application filing as reported in the Division of Health Standards and Licensure (DHSL), Department of Health and Senior Services, Quarterly Survey of Hospital and Nursing*

*Home (or Residential Care Facility) Bed Utilization and certified through a written finding by the DHSL, in which case the* The following population-based long-term care bed need methodology for the fifteen (15)-mile radius shall be used to determine the maximum size of the need:

(A) Approval of additional *[intermediate care facility/skilled nursing facility (I ICF/SNF)]* beds will be based on a service area need determined to be fifty-three (53) beds per one thousand (1,000) population age sixty-five (65) and older minus the current supply of ICF/SNF beds shown in the *[Inventory] Six-Quarter Occupancy* of Hospital and Nursing Home **Licensed and Available ICF/SNF Beds** as provided by the Certificate of Need Program (CONP) which includes licensed **beds** and Certificate of Need (CON)-approved beds; and

(B) Approval of additional RCF beds will be based on a service area need determined to be sixteen (16) beds per one thousand (1,000) population age sixty-five (65) and older minus the current supply of RCF beds shown in the *[Inventory] Six-Quarter Occupancy* of Residential Care Facility **Licensed and Available Beds** as provided by the CONP which includes licensed **beds** and CON-approved beds.

(3) Replacement Chapter 198, **RSMo**, beds qualify for *[an exception to the LTC bed MOR plus]* shortened information requirements and review time frames if an applicant proposes to *[—]*:

(4) For LTC bed expansions involving a Chapter 198, **RSMo**, facility *[qualify] that qualifies* for *[an exception to the LTC bed MOR. In addition to the]* shortened information requirements and review time frames, **the** applicants shall also submit the following information:

(5) An exception to the *[LTC bed MOR and]* CON application filing fee will be recognized for any proposed facility which is designed and operated exclusively for persons with acquired human immunodeficiency syndrome (AIDS).

*[[6] An exception to the LTC bed MOR will be recognized for a proposed LTC facility where at least ninety-five percent (95%) of the patients require kosher diets pursuant to section 197.318.5, RSMo.]*

*[[7]] (6)* Any newly-licensed Chapter 198, **RSMo**, facility established as a result of the Alzheimer's and dementia demonstration projects pursuant to Chapter 198, **RSMo**, or aging-in-place pilot projects pursuant to Chapter 198, **RSMo**, as implemented by the *[DHSL] Division of Senior Services and Regulation (DSSR)*, may be licensed by the *[DHSL] DSSR* until the completion of each project. If a demonstration or pilot project receives a successful evaluation from the *[DHSL] DSSR* and a qualified Missouri school or university, and meets the *[DHSL] DSSR* standards for licensure, this will ensure continued licensure without a new CON.

*[[8]] (7)* For LTC renovation or modernization projects which do not include increasing the number of beds, the applicant should document the following, if applicable:

(A) The proposed project is needed to comply with current facility code requirements of local, state or federal governments;

(B) The proposed project is needed to meet requirements for licensure, certification or accreditation, which if not undertaken, could result in a loss of accreditation or certification;

(C) Operational efficiencies will be attained through reconfiguration of space and functions;

(D) The methodologies used for determining need;

(E) The rationale for the reallocation of space and functions; and

(F) The benefits to the facility because of its age or condition.

*[[9]] (8)* The most current version of Form MO 580-2352 may be obtained by mailing a written request to the CONP, 915G Leslie Boulevard, Jefferson City, MO 65101, or in person at the CONP Office, or, if technically feasible, by downloading a copy of the form from the CONP web site at *[www.dhss.state.mo.us/con]* **www.dhss.mo.gov/con**.

*AUTHORITY: section 197.320, RSMo 2000. Emergency rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Original rule filed Aug. 29, 1997, effective March 30, 1998. For intervening history, please consult the Code of State Regulations. Amended: Filed April 12, 2004.*

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

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

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support or in opposition to this proposed amendment with Thomas R. Piper, Director, Certificate of Need Program, 915G Leslie Blvd., Jefferson City, MO 65101. To be considered, comments must be received by 5:00 p.m. on June 17, 2004. A public hearing has been scheduled for June 17, 2004, at 10:00 a.m. at the Certificate of Need Program Office located at 915G Leslie Blvd., Jefferson City, Missouri.*

## Title 20—DEPARTMENT OF INSURANCE Division 200—Financial Examination Chapter 2—Reinsurance and Assumptions

### PROPOSED AMENDMENT

**20 CSR 200-2.100 Credit for Reinsurance.** The department is amending sections (2), (3), (4) and (13) of this rule.

*PURPOSE: The purpose of this amendment is to clarify that credit for reinsurance ceded will not be allowed where the assuming insurer's certificate of authority has been suspended for reasons related to the assuming insurer's financial condition.*

(2) Pursuant to section 375.246.1(1), **RSMo**, the director shall allow credit for reinsurance ceded by a domestic insurer to assuming insurers which were licensed in this state as of the date of the ceding insurer's statutory financial statement. **For purposes of this rule, an insurer whose certificate of authority has been suspended or revoked for one (1) or more of the grounds set forth in section 375.881.1(1), (2), or (3), RSMo, shall be deemed not licensed in this state.**

(3) Credit for Reinsurance—Accredited Reinsurers.

(A) Pursuant to section 375.246.1(2), **RSMo**, the director shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer which is accredited as a reinsurer in this state as of the date of the ceding insurer's statutory financial statement. An accredited reinsurer is one which—

1. Files with the director the following:

A. A properly executed application for approval as an authorized reinsurer, the form of which is set forth as Exhibit 1 of this rule, **included herein;**

B. A certified copy of a letter or a certificate of authority or of compliance as evidence that the company is licensed to transact insurance or reinsurance in at least one (1) state or, in the case of a United States branch of an alien assuming insurer, is entered through

and licensed to transact insurance or reinsurance in at least one (1) state;

C. A properly executed appointment of the director to acknowledge or receive service of process, the form of which is set forth as Exhibit 2 of this rule, **included herein**;

D. A properly executed Form AR-1, which is set forth as Exhibit 3 of this rule, **included herein**, as evidence of its submission to this state's jurisdiction and to this state's authority to examine its books and records;

E. A copy of its articles of incorporation or association, as amended, duly certified by the proper officer of the state under whose laws it is organized or incorporated;

F. A copy of its bylaws, certified by its secretary;

G. A biographical sketch of its directors and officers as listed in its annual statement, accompanied by the original signatures of those directors and officers, the form of which is set forth as Exhibit 4 of this rule, **included herein**;

H. A copy of the registration statement of any holding company system if it is a member of such a system; and

I. Its most currently dated audited financial report;

2. Files with the director in addition to its initial application, and annually after that, prior to March 1 of each year, a certified copy of the annual statement it has filed with the insurance department of its state of domicile or, in the case of an alien assuming insurer, with the state through which it is entered and in which it is licensed to transact insurance or reinsurance, including an actuarial certification and management discussion and analysis;

3. Includes, with the documents required to be filed under preceding provisions of this section, the appropriate filing fees as set forth in section 374.230, RSMo; and

4. Maintains a surplus as regards policyholders in an amount not less than twenty (20) million dollars and whose accreditation has not been denied by the director within ninety (90) days of its submission or, in the case of companies with a surplus as regards policyholders of less than twenty (20) million dollars, whose accreditation has been approved by the director.

(4) Credit for Reinsurance—Qualified Reinsurer Domiciled and Licensed in Another State.

(A) Pursuant to section 375.246.1(3), RSMo, the director shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer which is qualified as a reinsurer as of the date of the ceding insurer's statutory financial statement. A qualified reinsurer is one which—

1. Files the following with the director:

A. A properly executed application for approval as an authorized reinsurer, the form of which is set forth as Exhibit 1 of this rule;

B. Certified copy of a letter or a certificate of authority or of compliance as evidence that the company is licensed to transact insurance or reinsurance in at least one (1) state or, in the case of a United States branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one (1) state; and

C. A properly executed appointment of the director to acknowledge or receive service of process, the form of which is set forth as Exhibit 2 of this rule;

2. Files with the director in addition to its initial application, and annually after that, prior to March 1 of each year, a certified copy of the annual statement it has filed with the insurance department of its state of domicile or, in the case of an alien assuming insurer, with the state through which it is entered and in which it is licensed to transact insurance or reinsurance, including an actuarial certification and management discussion and analysis required as part of the National Association of Insurance Commissioners (NAIC) annual statement requirements;

3. Files with the director a properly executed Form AR-2, the form of which is set forth as Exhibit 5 of this rule, **included herein**,

as evidence of its submission to this state's authority to examine its books and records;

4. Is domiciled and licensed in (or, in the case of a United States branch of an alien assuming insurer, is entered through and licensed in) a state which employs standards regarding credit for reinsurance substantially similar to those applicable under the Law on Credit Reinsurance, section 375.246, RSMo (the Act) and this rule;

5. Includes with the documents required to be filed under preceding provisions of this section the appropriate filing fees as set forth in section 374.230, RSMo; and

6. Maintains a surplus as regards policyholders in an amount not less than twenty (20) million dollars.

(13) Authority. This rule is promulgated pursuant to the authority granted by sections 37/5/4.045 and 375.246, RSMo.

*AUTHORITY: sections 374.045, RSMo [Supp. 1993] 2000 and 375.246.4, RSMo [Supp. 1991] Supp. 2003. This rule was previously filed as 4 CSR 190-11.350. Original rule filed Jan. 8, 1991, effective Jan. 1, 1992. Amended: Filed July 2, 1991, effective Jan. 1, 1992. Amended: Filed Oct. 15, 1992, effective June 7, 1993. Amended: Filed April 7, 2004.*

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

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

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing will be held on this proposed amendment at 10 a.m. on June 22, 2004. The public hearing will be held at the Harry S Truman State Office Building, 301 West High Street, Jefferson City, Missouri. Opportunities to be heard at the hearing shall be afforded to any interested person. Interested persons, whether or not heard, may submit a written statement in support of or in opposition to the proposed amendment, until 5:00 p.m. on June 22, 2004. Written statements shall be sent to Stephen R. Gleason, Department of Insurance, PO Box 690, Jefferson City, MO 65102.*

*SPECIAL NEEDS: If you have any special needs addressed by the Americans With Disabilities Act, please notify us at (573) 751-6798 or (573) 751-2619 at least five (5) working days prior to the hearing.*