

**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 If an existing rule is to be amended or rescinded, it will have a heading of proposed amendment or proposed rescission.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.

(A) Mammals: Any species of flying fox or fruit bat of the genus *Pteropus*; any species of mongoose or meerkat of the genera *Atilax*, *Cynictis*, *Helogale*, *Herpestes*, *Ichneumia*, *Mungos* or *Suricata*; any species of the European rabbit genus *Oryctolagus*; any species of the Indian wild dog, red dog or dhole of the genus *Cuon*; any species of the multimammal rat or mouse of the genus *Mastomys*; raccoon dog, *Nyctereutes procyonoides*; brushtail possum, *Trichosurus vulpecula*;

(B) Birds: pink starling or rosy pastor, *Sturnus roseus*; species of dioch (including the subspecies black-fronted, red-billed or Sudan dioch), *Quelea quelea*; Java sparrow, *Padda oryzivora*; red whiskered bul-bul, *Pycnonotus jocosus*;

(C) Fishes: Live fish or viable eggs of snakehead fish of the genera *Channa* or *Parachanna* (or the generic synonyms of *Bostrychooides*, *Ophicephalus*, *Ophiocephalus* and *Parophiocephalus*); walking catfish of the family Clariidae; and

(D) Invertebrates: New Zealand mudsnail, *Potamopyrgus antipodarum*; rusty crayfish *Orconectes rusticus*; Australian crayfish of the genus *Cherax*; mitten crabs of the genus *Eriocheir*; zebra mussels, *Dreissena polymorpha*.

*AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. Original rule filed April 20, 2005.*

*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 John W. Smith, Assistant Director, Department of Conservation, PO Box 180, 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 3—DEPARTMENT OF CONSERVATION  
Division 10—Conservation Commission  
Chapter 6—Wildlife Code: Sport Fishing: Seasons,  
Methods Limits**

**PROPOSED AMENDMENT**

**3 CSR 10-6.415 Restricted Zones.** The commission proposes to amend section (5).

*PURPOSE: This amendment adds a new subsection (5)(G) that establishes seasonal restrictions on fishing methods on Hickory Creek.*

(5) Fish may be taken by all prescribed methods except that only flies and artificial lures may be used when fishing and soft plastic baits and natural and scented baits are specifically prohibited in:

**(G) Hickory Creek in Newton County from the Highway 86 bridge to its confluence with Shoal Creek from November 1 through the last day of February.**

**[(G)](H) Lake Taneycomo in Taney County from the closed zone seven hundred sixty feet (760') below Table Rock Dam to the mouth of Fall Creek.**

**[(H)](I) Little Piney Creek from the Phelps County Line in Sections 9 and 16 of T35N, R8W, including Piney Spring Branch and Lane Spring Branch, to Milldam Hollow Access.**

**[(I)](J) Meramec River in Crawford and Phelps counties from Highway 8 bridge to Scott's Ford.**

Proposed Amendment Text Reminder:

**Boldface text indicates new matter.**

*[Bracketed text indicates matter being deleted.]*

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

**PROPOSED RULE**

**3 CSR 10-4.117 Prohibited Species**

*PURPOSE: This rule establishes a list of species that may not be possessed in Missouri.*

**(1) Prohibited species may not be imported, exported, transported, sold, purchased or possessed alive in Missouri without written approval of the director.**

**(2) For the purpose of this rule, prohibited species of wildlife shall include the following:**

*[(J)](K)* Mill Creek in Phelps County from Yelton Spring to its confluence with Little Piney Creek including Wilkins Spring and spring branch.

*[(K)](L)* North Fork of White River in Ozark County from the upper outlet of Rainbow Spring to Patrick Bridge.

*[(L)](M)* Roubidoux Creek from the elevated utility cable crossing approximately one-half (1/2) mile below the Business I-44 bridge in Waynesville to its confluence with the Gasconade River.

*[(M)](N)* Spring Creek in Phelps County from Relfe Spring to its confluence with Big Piney River.

*AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. Original rule filed June 13, 1994, effective Jan. 1, 1995. For intervening history, please consult the Code of State Regulations. Amended: Filed April 20, 2005.*

*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 John W. Smith, Assistant Director, Department of Conservation, PO Box 180, 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 3—DEPARTMENT OF CONSERVATION  
Division 10—Conservation Commission  
Chapter 6—Wildlife Code: Sport Fishing: Seasons,  
Methods Limits**

**PROPOSED AMENDMENT**

**3 CSR 10-6.535 Trout.** The commission proposes to amend section (1).

*PURPOSE: This amendment establishes a catch-and-release trout fishing season on Hickory Creek.*

(1) Daily Limit: Four (4) trout in the aggregate except:

**(A) From November 1 through the last day of February, all trout must be released unharmed immediately after being caught from Hickory Creek in Newton County from the Highway 86 bridge to its confluence with Shoal Creek.**

*[(A)](B)* On Lake Taneycomo and its tributaries only one (1) brown trout may be included in the aggregate daily limit of trout.

*[(B)](C)* The daily limit is one (1) trout in: Barren Fork Creek in Shannon County from County Road A-D to its confluence with Sinking Creek; Blue Springs Creek in Crawford County from Blue Springs to its confluence with Meramec River; Crane Creek in Stone and Lawrence counties upstream from Quail Spur Crossing on Stone County Road 13-195; Current River and its tributaries from Montauk State Park to Cedar Grove; Eleven Point River in Oregon County from its confluence with Greer Spring Branch to Turner Mill; Little Piney Creek from the Phelps County line in Sections 9 and 16 of T35N, R8W, including Piney Spring Branch and Lane Spring Branch, to Milldam Hollow Access; Spring Creek in Phelps County from Relfe Spring to its confluence with Big Piney River; Mill Creek in Phelps County from Yelton Spring to its confluence with Little Piney Creek including Wilkins Spring and spring branch; and the North Fork of White River in Ozark County from the upper outlet of Rainbow Spring to Patrick Bridge.

*[(C)](D)* The daily limit is two (2) trout in: Meramec River and its tributaries, except Maramec Spring Branch, in Crawford and Phelps counties from Highway 8 bridge to Scott's Ford; the unpounded portion of the North Fork of White River and its tributaries in Ozark County from Patrick Bridge to Norfolk Lake; and Roubidoux Creek from the elevated utility cable crossing approximately one-half (1/2) mile below the Business I-44 bridge in Waynesville to its confluence with the Gasconade River.

*AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. Original rule filed June 13, 1994, effective Jan. 1, 1995. For intervening history, please consult the Code of State Regulations. Amended: Filed April 20, 2005.*

*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 John W. Smith, Assistant Director, Department of Conservation, PO Box 180, 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 3—DEPARTMENT OF CONSERVATION  
Division 10—Conservation Commission  
Chapter 7—Wildlife Code: Hunting: Seasons, Methods,  
Limits**

**PROPOSED AMENDMENT**

**3 CSR 10-7.410 Hunting Methods.** The commission proposes to amend subsection (1)(D).

*PURPOSE: This amendment restores hunting with dogs during the daylight hours of the November portion of the firearms deer season for furbearers, squirrels and rabbits in Bollinger County and put species in alphabetical order.*

(1) Wildlife may be hunted and taken only in accordance with the following:

(D) Dogs. Dogs may be used during the prescribed open seasons to chase, pursue or take wildlife (except *[deer, turkey, mink, muskrat, beaver and river otter]* **beaver, deer, mink, muskrat, river otter and turkey**). All dogs used to hunt, chase or pursue wildlife shall wear a collar while hunting that contains the full name and address or complete telephone number of the owner, except this provision does not apply to dogs used by waterfowl and game bird hunters. Furbearers, squirrels and rabbits may not be chased, pursued or taken with dogs during daylight hours of the November portion of the firearms deer season in *[Bollinger,]* Butler, Carter, Dent, Iron, Madison, Oregon, Reynolds, Ripley, Shannon and Wayne counties.

*AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. Original rule filed July 22, 1974, effective Dec. 31, 1974. For intervening history, please consult the Code of State Regulations. Amended: Filed April 20, 2005.*

*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 John W. Smith, Assistant Director, Department of Conservation, PO Box 180, 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 3—DEPARTMENT OF CONSERVATION

#### Division 10—Conservation Commission

#### Chapter 9—Wildlife Code: Confined Wildlife: Privileges, Permits, Standards

#### PROPOSED AMENDMENT

**3 CSR 10-9.110 General Prohibition; Applications.** The commission proposes to amend sections (2) and (4).

*PURPOSE:* This amendment adds reference to the new prohibited species list and clarifies the conditions under which live fish, their eggs and gametes of the family *Salmonidae* (trouts, char, salmon) may be imported and reduces the associated threats of introduction of invasive species.

(2) Except for federally-designated endangered species and species listed in **3 CSR 10-4.117** and **3 CSR 10-9.240**, the following may be bought, sold, possessed, transported and exhibited without permit: Asiatic clams (*Corbicula* species) taken from impoundments that are not waters of the state; bison; amphibians, reptiles, and mammals not native to Missouri; and those birds (except ring-necked pheasants and gray partridge) not native to the continental United States.

(4) Live fish, their eggs and gametes of the family *Salmonidae* (trouts, char, salmon) may be imported to the state only by the holder of a [fish] **salmonid** importation permit and any other appropriate state permit. [This] **An** importation permit shall be **required for each shipment and will be** issued at no charge.[, for each shipment, to a person who has applied upon a special form furnished by the department which is included herein, if this application is] **Applications for the salmonid importation permit are available from the department. The application for salmonid importation permit must be** received not less than fifteen (15) nor more than eighty (80) days prior to the **proposed date** of shipment. [, and if the shipment is considered not detrimental to the fisheries resources of the state. This permit will be issued only if the immediate source of the importation is certified negative for *Viral Hemorrhagic Septicemia*, *Infectious Pancreatic Necrosis*, *Infectious Hematopoietic Necrosis*, *Myxobolus cerebralis*, or other diseases which may threaten fish stocks within the state.] **Prior to permit issuance the immediate source of the importation must be currently certified as negative for viral hemorrhagic septicemia, infectious pancreatic necrosis, infectious hematopoietic necrosis, *Myxobolus cerebralis* or other diseases which may threaten fish stocks within the state, must have been certified negative for the previous three (3) consecutive years and must not pose a threat of introducing unwanted species.** Certification will only be accepted from federal, state or industry personnel approved by the department and only in accordance with provisions on the permit application form. Fish, eggs and gametes imported under this permit are subject to inspection by authorized agents of the department and this inspection may include removal of reasonable samples of fish or eggs for biological examination.

*AUTHORITY:* sections 40 and 45 of Art. IV, Mo. Const. This rule was previously filed as 3 CSR 10-4.110(5), (6) and (10). Original rule filed June 26, 1975, effective July 7, 1975. For intervening history, please consult the *Code of State Regulations*. Amended: Filed April 20, 2005.

*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 John W. Smith, Assistant Director, Department of Conservation, PO Box 180, 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 3—DEPARTMENT OF CONSERVATION

#### Division 10—Conservation Commission

#### Chapter 9—Wildlife Code: Confined Wildlife: Privileges, Permits, Standards

#### PROPOSED AMENDMENT

**3 CSR 10-9.645 Licensed Trout Fishing Area Permit: Privileges, Requirements.** The commission proposes to amend section (3) and add a new section (5).

*PURPOSE:* This amendment clarifies the disease certification requirements for stocking trout in a Licensed Trout Fishing Area and the conditions under which a Licensed Trout Fishing Area Permit is needed.

(3) A permittee may release legally acquired rainbow trout or brown trout for fishing and harvest throughout the year, under the following conditions:

(A) The immediate source of the trout to be stocked must be **currently** certified as negative for [V]viral [H]hemorrhagic [S]septicemia, [I]infectious [P]pancreatic [N]necrosis, [I]infectious [H]hematopoietic [N]necrosis, *Myxobolus cerebralis* or other diseases which may threaten fish stocks within the state, **must have been certified negative for the previous three (3) consecutive years and must not pose a threat of introducing unwanted species.** Certification will only be accepted from federal, state or industry personnel approved by the department and only in accordance with provisions of the fish importation permit regulations (see 3 CSR 10-9.110(4)).

(5) **A Licensed Trout Fishing Area Permit is not required for stocking trout into an impoundment that is not subject to movement of fishes to and from waters of the state and is entirely confined and located completely upon lands owned or leased by a single person or by two (2) or more persons jointly or as tenants in common or by corporate shareholders.**

*AUTHORITY:* sections 40 and 45 of Art. IV, Mo. Const. Original rule filed April 24, 2000, effective March 1, 2001. Amended: Filed May 9, 2002, effective March 1, 2003. Amended: Filed April 20, 2005.

*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 John W. Smith, Assistant Director, Department of Conservation, PO Box 180, 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 3—DEPARTMENT OF CONSERVATION  
Division 10—Conservation Commission  
Chapter 10—Wildlife Code: Commercial Permits:  
Seasons, Methods, Limits**

**PROPOSED AMENDMENT**

**3 CSR 10-10.744 Commercial Deer Processing: Permit, Privileges, Requirements.** The commission proposes to amend section (3).

*PURPOSE: This amendment extends the exemption period, outlined in this section for deer processors, to coincide with the dates of the archery deer season.*

(3) For the purposes of processing speciality deer meats, commercial processors are exempt from provisions of 3 CSR 10-4.137. For purposes of storing speciality deer meats, commercial processors are exempt from provisions of 3 CSR 10-4.137 and 3 CSR 10-4.140(2), but only from [October 1] **September 15** through March 31. These exemptions do not apply to raw, packaged venison.

*AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. Original rule filed April 28, 1992, effective Dec. 3, 1992. Emergency rule filed July 31, 1992, effective Sept. 1, 1992, expired Dec. 3, 1992. Amended: Filed April 30, 2001, effective Sept. 30, 2001. Amended: Filed April 20, 2005.*

*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 John W. Smith, Assistant Director, Department of Conservation, PO Box 180, 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 3—DEPARTMENT OF CONSERVATION  
Division 10—Conservation Commission  
Chapter 11—Wildlife Code: Special Regulations for  
Department Areas**

**PROPOSED AMENDMENT**

**3 CSR 10-11.115 Closings.** The commission proposes to amend subsection (3)(A).

*PURPOSE: This amendment reduces the size of the Stockton Lake Waterfowl Refuge.*

(3) The following department areas are closed to protect waterfowl:

(A) On Stockton Lake waterfowl refuge, hunting, fishing, trapping, boating and vehicles are prohibited from October 15 through the area's prescribed duck [and Canada goose] season/s] on all Corps of Engineers lands and waters on and adjacent to the Little Sac Arm [from the] **between the Highway 123 bridge [to the county road bridge crossing Little Sac River in Section 11, T32N, R24W] on the west, the high bank of Stockton Lake on the south, Highway T on the north, and the area boundary on the east.**

*AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. This rule previously filed as 3 CSR 10-4.115. Original rule filed April 30, 2001, effective Sept. 30, 2001. Amended: Filed Oct. 1, 2001, effective Oct. 15, 2001. Amended: Filed May 9, 2002, effective Oct. 30, 2002. Amended: Filed April 20, 2005.*

*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 John W. Smith, Assistant Director, Department of Conservation, PO Box 180, 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 3—DEPARTMENT OF CONSERVATION  
Division 10—Conservation Commission  
Chapter 12—Wildlife Code: Special Regulations for  
Areas Owned by Other Entities**

**PROPOSED AMENDMENT**

**3 CSR 10-12.109 Closed Hours.** The commission proposes to amend section (1).

*PURPOSE: This amendment establishes closed hours for uses other than fishing and other conservation-related recreation at Sedalia Water Department (Spring Fork Lake).*

(1) Closed Hours. The following areas are closed to public use from 10:00 p.m. to 4:00 a.m. daily; however, hunting, fishing, trapping, dog training, camping, launching boats and landing boats are permitted at any time on areas where these activities are authorized, except as further restricted in this chapter.

**(O) Sedalia Water Department (Spring Fork Lake)**  
[(O)](P) Springfield City Utilities (Fellows Lake, Lake Springfield, Tailwaters Access)

*AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. Original rule filed June 1, 2001, effective Oct. 30, 2001. Amended: Filed Sept. 29, 2004, effective Feb. 28, 2005. Amended: Filed April 20, 2005.*

*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 John W. Smith, Assistant Director, Department of Conservation, PO Box 180,*

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 3—DEPARTMENT OF CONSERVATION  
Division 10—Conservation Commission  
Chapter 12—Wildlife Code: Special Regulations for  
Areas Owned by Other Entities**

**PROPOSED AMENDMENT**

**3 CSR 10-12.110 Use of Boats and Motors.** The commission proposes to amend sections (5), (6) and (7).

*PURPOSE:* This amendment establishes provisions for outboard motor use in excess of ten (10) horsepower operated at slow, no-wake speed on Macon City Lake and establishes provisions for boat use on Springfield City Utilities (Fellows Lake).

(5) Outboard motors not in excess of ten (10) horsepower may be used on the following areas:

- [(D)]* Macon City Lake
- [(E)](D)* Moberly (Rothwell Park Lake, Water Works Lake)
- [(F)](E)* Springfield City Utilities (Lake Springfield)
- [(G)](F)* Unionville (Lake Mahoney)
- [(H)](G)* Wakonda State Park (Agate Lake and Wakonda Lake)

(6) Outboard motors in excess of ten (10) horsepower may be used but must be operated at slow, no-wake speed on the following areas:

**(H) Macon City Lake**

- [(H)](I)* Marceline (Marceline City Lake, Old Marceline City Reservoir)
- [(I)](J)* Mark Twain National Forest (Council Bluff Lake, Palmer Lake)
- [(J)](K)* Memphis (Lake Showme)
- [(K)](L)* Milan (Elmwood Lake)
- [(L)](M)* Monroe (Route J Reservoir)
- [(M)](N)* Watkins Woolen Mill State Park and Historic Site (Williams Creek Lake)

(7) *[Outboard motors not in excess of forty (40) horsepower may be used on Springfield City Utilities (Fellows Lake).] On Springfield City Utilities (Fellows Lake):*

(A) Boats are permitted for waterfowl hunting but must be launched at the ramp or hand launched at the designated blind site daily and removed from the lake by sunset daily.

(B) Outboard motors not in excess of forty (40) horsepower may be used.

*AUTHORITY:* sections 40 and 45 of Art. IV, Mo. Const. This rule previously filed as 3 CSR 10-4.116. Original rule filed April 30, 2001, effective Sept. 30, 2001. For intervening history, please consult the *Code of State Regulations*. Amended: Filed April 20, 2005.

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

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*NOTICE TO SUBMIT COMMENTS:* Anyone may file a statement in support of or in opposition to this proposed amendment with John W. Smith, Assistant Director, Department of Conservation, PO Box 180, 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 3—DEPARTMENT OF CONSERVATION  
Division 10—Conservation Commission  
Chapter 12—Wildlife Code: Special Regulations for  
Areas Owned by Other Entities**

**PROPOSED AMENDMENT**

**3 CSR 10-12.115 Bullfrogs and Green Frogs.** The commission proposes to amend section (1).

*PURPOSE:* This amendment establishes methods for harvesting bullfrogs and green frogs at Sedalia Water Department (Spring Fork Lake).

(1) Bullfrogs and green frogs may be taken during the statewide season only by hand, handnet, gig, longbow, snagging, snaring, grabbing or pole and line except as further restricted by this chapter.

(B) Only pole and line may be used to take frogs on the following areas:

1. Bridgeton (Kiwanis Lake)
2. Butler City Lake
3. Jennings (Koeneman Park Lake)
4. Kirkwood (Walker Lake)
5. Mineral Area College (Quarry Pond)
6. Overland (Wild Acres Park Lake)
7. Potosi (Roger Bilderback Lake)
8. St. Charles (Fountain Lakes Pond, Kluesner Lake, Moore Lake, Skate Park Lake)
9. St. Louis County (Bee Tree Lake, Creve Coeur Lake, Simpson Lake, Spanish Lake, Sunfish Lake)
10. Sedalia (Clover Dell Park Lake, Liberty Park Pond)
- 11. Sedalia Water Department (Spring Fork Lake)**
- [(11)]12.* Warrensburg (Lion's Lake)
- [(12)]13.* Wentzville (Community Club Lake)
- [(13)]14.* Windsor (Farrington Park Lake)

*AUTHORITY:* sections 40 and 45 of Art. IV, Mo. Const. This rule previously filed as 3 CSR 10-4.116. Original rule filed April 30, 2001, effective Sept. 30, 2001. Amended: Filed Oct. 9, 2003, effective March 30, 2004. Amended: Filed Oct. 8, 2004, effective March 30, 2005. Amended: Filed April 20, 2005.

*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 John W. Smith, Assistant Director, Department of Conservation, PO Box 180, 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 3—DEPARTMENT OF CONSERVATION  
Division 10—Conservation Commission  
Chapter 12—Wildlife Code: Special Regulations for  
Areas Owned by Other Entities**

**PROPOSED AMENDMENT**

**3 CSR 10-12.125 Hunting and Trapping.** The commission proposes to amend subsections (1)(B) and (C) and add a new subsection (1)(H).

*PURPOSE: This amendment establishes a restriction for hunting on Sedalia Water Department (Spring Fork Lake), and establishes provisions for managed waterfowl hunts on Springfield City Utilities (Fellows Lake).*

(1) Hunting, under statewide permits, seasons, methods and limits, is permitted except as further restricted in this chapter and except for deer hunting as authorized in the annual *Fall and Turkey Hunting Regulations and Information* booklet. This publication is incorporated by reference. A copy of this booklet is published by and can be obtained from the Missouri Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. It is also available online at [www.missouriconservation.org](http://www.missouriconservation.org). This rule does not incorporate any subsequent amendment or additions.

(B) Hunting is prohibited on the following areas:

1. Thomas S. Baskett Wildlife Research and Education Center
2. Bethany (Old Bethany City Reservoir)
3. Bridgeton (Kiwanis Lake)
4. California (Proctor Park Lake)
5. Carthage (Kellogg Lake)
6. Columbia (Antimi Lake, Cosmo-Bethel Lake, Lake of the Woods, Twin Lake)
7. Dexter City Lake
8. Farmington (Giessing Lake, Hager Lake and Thomas Lake)
9. Hamilton City Lake
10. Harrisonville (North Lake)
11. Jackson (Rotary Lake)
12. Jackson County (Alex George Lake, Bergan Lake, Bowlin Road Lake, Fleming Pond, Lake Jacomo, Prairie Lee Lake, Scherer Lake, Tarsney Lake, Wood Lake, Wyatt Lake)
13. James Foundation (Scioto Lake)
14. Jamesport City Lake
15. Lawson City Lake
16. Mexico (Lakeview Lake, Kiwanis Lake)
17. Mineral Area College (Quarry Pond)
18. Moberly (Rothwell Park Lake, Water Works Lake)
19. Mount Vernon (Williams Creek Park Lake)
20. Overland (Wild Acres Park Lake)
21. Potosi (Roger Bilderback Lake)
22. Rolla (Schuman Park Lake)
23. St. Charles (Fountain Lakes Pond, Kluesner Lake, Moore Lake, Skate Park Lake)
24. St. Louis County (Bee Tree Lake, Creve Coeur Lake, Simpson Lake, Spanish Lake, Sunfish Lake)
25. Savannah City Lake
26. Sedalia (Clover Dell Park Lake)
27. Sedalia Water Department (Spring Fork Lake)
- 27./28. Springfield City Utilities (Lake Springfield)
- 28./29. Warrensburg (Lion's Lake)
- 29./30. Windsor (Farrington Park Lake)

(C) Firearms hunting is prohibited on Cameron (Reservoirs No. 1, 2, and 3, Grindstone Reservoir) [and *Springfield City Utilities (Fellows Lake)*], except waterfowl hunting is permitted under statewide regulations until 1:00 p.m. on designated portions of Cameron (Reservoir No. 3, Grindstone Reservoir) [and *Springfield City Utilities (Fellows Lake)*].

(H) On Springfield City Utilities (Fellows Lake):

1. Hunting of wildlife other than waterfowl is prohibited, except in designated areas, from October 15 through the end of the prescribed waterfowl season.

2. Waterfowl hunting is permitted except as further restricted in this chapter. Statewide permits, seasons, methods, and limits apply unless otherwise provided in this chapter.

3. Waterfowl hunting is permitted until 1:00 p.m. Waterfowl hunters must check out immediately after the close of their hunting trip and prior to processing birds by accurate completion and return of the daily waterfowl hunting tag to designated locations.

4. Blinds and/or blind sites shall be designated and allotted through a system of registration and drawing established by the department. Blinds must be constructed within fifty (50) yards of an assigned site only during the dates assigned by the department. Blinds may be constructed using willows (*Salicaceae*), cedar (*Juniperus virginiana*), and non-woody vegetation collected on-site.

5. Waterfowl may be taken only by holders of a valid area daily waterfowl hunting tag and only from a designated blind or blind site, except that hunters may retrieve dead birds and pursue and shoot downed cripples. Blinds or blind sites may not be locked, transferred, rented, or sold. After 6:00 a.m., unoccupied blinds may be used by the first hunter to arrive.

6. Non-hunters are prohibited within the shooting areas during the waterfowl hunting season unless they are members of, and remain with, a party authorized to use the area, except that the north arm of the lake from a line extending from the point separating the north and south arms of the lake to the north end of the buoy line nearest the dam is open to fishing during all or part of the waterfowl season.

*AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. This rule previously filed as 3 CSR 10-4.116. Original rule filed April 30, 2001, effective Sept. 30, 2001. Amended: Filed May 9, 2002, effective Oct. 30, 2002. Amended: Filed Oct. 9, 2003, effective March 30, 2004. Amended: Filed Oct. 8, 2004, effective March 30, 2005. Amended: Filed April 20, 2005.*

*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 John W. Smith, Assistant Director, Department of Conservation, PO Box 180, 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 3—DEPARTMENT OF CONSERVATION  
Division 10—Conservation Commission  
Chapter 12—Wildlife Code: Special Regulations for  
Areas Owned by Other Entities**

**PROPOSED AMENDMENT**

**3 CSR 10-12.140 Fishing, Daily and Possession Limits.** The commission proposes to amend section (2).

*PURPOSE: This amendment establishes daily and possession limits for black bass on Sedalia Water Department (Spring Fork Lake).*

(2) The daily limit for black bass is two (2) on the following lakes:

(T) Sedalia Water Department (Spring Fork Lake)

[(T)](U) St. Charles (Fountain Lakes Pond, Kluesner Lake, Moore Lake, Skate Park Lake)

[(U)](V) St. Louis City (Benton Park Lake, Boathouse Lake, Clifton Heights Park Lake, Fairgrounds Park Lake, Horseshoe Lake, Hyde Park Lake, Jefferson Lake, Lafayette Park Lake, North Riverfront Park Lake, O'Fallon Park Lake, Willmore Park North Lake, Willmore Park South Lake)

[(V)](W) St. Louis County (Bee Tree Lake, Bellefontaine Park Lake, Creve Coeur Lake, Queeny Park Lake, Simpson Lake, Spanish

Lake, Sunfish Lake, Suson Park Lakes No. 1, 2, and 3, Tilles Park Lake, Veteran's Memorial Park Lake)

*/(W)/(X)* Unionville (Lake Mahoney)  
*/(X)/(Y)* University of Missouri (South Farm R-1 Lake)  
*/(Y)/(Z)* Warrensburg (Lion's Lake)  
*/(Z)/(AA)* Watkins Mill State Park Lake  
*/(AA)/(BB)* Wentzville (Community Club Lake)  
*/(BB)/(CC)* Windsor (Farrington Park Lake)

*AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. This rule previously filed as 3 CSR 10-4.116. Original rule filed April 30, 2001, effective Sept. 30, 2001. For intervening history, please consult the Code of State Regulations. Amended: Filed April 20, 2005.*

*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 John W. Smith, Assistant Director, Department of Conservation, PO Box 180, 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 3—DEPARTMENT OF CONSERVATION**  
**Division 10—Conservation Commission**  
**Chapter 12—Wildlife Code: Special Regulations for**  
**Areas Owned by Other Entities**

**PROPOSED AMENDMENT**

**3 CSR 10-12.145 Fishing, Length Limits.** The commission proposes to amend subsections (2)(B) and (C).

*PURPOSE: This amendment removes the fifteen inch (15") minimum length limit on black bass at Lancaster (New City Lake) and establishes an eighteen inch (18") minimum length limit on black bass on Sedalia Water Department (Spring Fork Lake).*

(2) Black bass more than twelve inches (12") but less than fifteen inches (15") total length must be returned to the water unharmed immediately after begin caught, except as follows:

(B) Black bass less than fifteen inches (15") total length must be returned to the water unharmed immediately after being caught on the following lakes:

1. Arrow Rock State Historic Site (Big Soldier Lake)
2. Bethany (Old Bethany City Reservoir)
3. Big Oak Tree State Park (Big Oak Lake)
4. Butler City Lake
5. California (Proctor Park Lake)
6. Cameron (Reservoirs No. 1, 2 and 3, Grindstone Reservoir)
7. Carthage (Kellogg Lake)
8. Columbia (Stephens Lake)
9. Concordia (Edwin A. Pape Lake)
10. Confederate Memorial State Historic Site lakes
11. Dexter City Lake
12. Hamilton City Lake
13. Harrison County Lake
14. Higginsville City Lake
15. Holden City Lake
16. Iron Mountain City Lake
17. Jackson (Rotary Lake)

18. Jackson County (Alex George Lake, Bergan Lake, Bowlin Road Lake, Lake Jacomo, Prairie Lee Lake, Scherer Lake, Tarsney Lake, Wood Lake, Wyatt Lake)

19. Jefferson City (McKay Park Lake)

*[20. Lancaster (New City Lake)]*

*[21.]20.* Macon (Blees Lake)

*[22.]21.* Maysville (Willow Brook Lake)

*[23.]22.* Mark Twain National Forest (Fourche Lake, Huzzah Pond, Loggers Lake, McCormack Lake, Noblett Lake, Roby Lake)

*[24.]23.* Mineral Area College (Quarry Pond)

*[25.]24.* Pershing State Park ponds

*[26.]25.* Potosi (Roger Bilderback Lake)

*[27.]26.* University of Missouri (Dairy Farm Lake No. 1 and McCredie Lake)

*[28.]27.* Warrensburg (Lion's Lake)

*[29.]28.* Watkins Mill State Park Lake

*[30.]29.* Windsor (Farrington Park Lake)

(C) Black bass less than eighteen inches (18") total length must be returned to the water unharmed immediately after being caught on the following lakes:

1. Ballwin (New Ballwin Lake, Vlasis Park Lake)

2. Bridgeton (Kiwanis Lake)

3. Columbia (Twin Lake)

4. Ferguson (January-Wabash Lake)

5. Jennings (Koeneman Park Lake)

6. Kirksville (Hazel Creek Lake)

7. Kirkwood (Walker Lake)

8. Overland (Wild Acres Park Lake)

**9. Sedalia Water Department (Spring Fork Lake)**

*[9.]10.* St. Charles (Fountain Lakes Pond, Kluesner Lake, Moore Lake, Skate Park Lake)

*[10.]11.* St. Louis City (Benton Park Lake, Boathouse Lake, Clifton Heights Park Lake, Fairgrounds Park Lake, Horseshoe Lake, Hyde Park Lake, Jefferson Lake, Lafayette Park Lake, North Riverfront Park Lake, O'Fallon Park Lake, Willmore Park North Lake, Willmore Park South Lake)

*[11.]12.* St. Louis County (Bee Tree Lake, Bellefontaine Park Lake, Creve Coeur Lake, Queeny Park Lake, Simpson Lake, Spanish Lake, Sunfish Lake, Suson Park Lakes, No. 1, 2 and 3, Tilles Park Lake, Veteran's Memorial Park Lake)

*[12.]13.* Unionville (Lake Mahoney)

*[13.]14.* University of Missouri (South Farm R-1 Lake)

*[14.]15.* Wentzville (Community Club Lake)

*AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. This rule previously filed as 3 CSR 10-4.116. Original rule filed April 30, 2001, effective Sept. 30, 2001. For intervening history, please consult the Code of State Regulations. Amended: Filed April 20, 2005.*

*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 John W. Smith, Assistant Director, Department of Conservation, PO Box 180, 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 3—DEPARTMENT OF CONSERVATION**  
**Division 10—Conservation Commission**  
**Chapter 12—Wildlife Code: Special Regulations for**  
**Areas Owned by Other Entities**

**PROPOSED AMENDMENT**

**3 CSR 10-12.150 Fishing, Trout Parks.** The commission proposes to amend subsection (1)(D) and add a new subsection (1)(E).

*PURPOSE:* This amendment opens Maramec Spring branch to winter catch and release fishing seven (7) days a week.

(1) On Maramec Spring Trout Park, Bennett Spring State Park, Montauk State Park and Roaring River State Park:

(D) Trout fishing is permitted from 8:00 a.m. to 4:00 p.m. on Fridays, Saturdays and Sundays from the second Friday in November through the second Sunday in February at **Bennett Spring State Park, Montauk State Park and Roaring River State Park.** Fishing in designated trout waters is permitted only by holders of a valid trout permit. Only flies may be used and all fish must be returned to the water unharmed immediately after being caught. Fish may not be possessed on these waters.

(E) Trout fishing is permitted from 8:00 a.m. to 4:00 p.m. daily from the second Friday in November through the second Sunday in February at Maramec Spring Trout Park. Fishing is permitted only by holders of a valid trout permit. Only flies may be used and all fish must be returned to the water unharmed immediately after being caught. Fish may not be possessed on these waters.

*AUTHORITY:* sections 40 and 45 of Art. IV, Mo. Const. This rule previously filed as 3 CSR 10-4.116. Original rule filed April 30, 2001, effective Sept. 30, 2001. Amended: Filed Sept. 29, 2004, effective Feb. 28, 2005. Amended: Filed April 20, 2005.

*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 John W. Smith, Assistant Director, Department of Conservation, PO Box 180, 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 3—DEPARTMENT OF CONSERVATION  
Division 10—Conservation Commission  
Chapter 20—Wildlife Code: Definitions**

**PROPOSED AMENDMENT**

**3 CSR 10-20.805 Definitions.** The commission proposes to amend section (23).

*PURPOSE:* This amendment adds nutria into the definition of furbearing animals.

(23) Furbearing animals: Furbearers: [Mink, muskrat, opossum, river otter, striped skunk, spotted skunk, badger, beaver, raccoon, long-tailed weasel, red fox, gray fox, bobcat, mountain lion, black bear and coyote.] **Badger, beaver, black bear, bobcat, coyote, gray fox, long-tailed weasel, mink, mountain lion, muskrat, nutria, opossum, raccoon, red fox, river otter, spotted skunk and striped skunk.**

*AUTHORITY:* sections 40 and 45 of Art. IV, Mo. Const. This rule previously filed as 3 CSR 10-11.805. Original rule filed April 30,

2001, effective Sept. 30, 2001. For intervening history, please consult the *Code of State Regulations*. Amended: Filed April 20, 2005.

*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 John W. Smith, Assistant Director, Department of Conservation, PO Box 180, 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 4—DEPARTMENT OF ECONOMIC  
DEVELOPMENT  
Division 220—State Board of Pharmacy  
Chapter 1—Organization and Description of Board**

**PROPOSED AMENDMENT**

**4 CSR 220-1.010 General Organization.** The board is proposing to add a new section (6) and renumber the remaining section accordingly.

*PURPOSE:* This amendment defines the term “open premises” as used in Chapter 338, RSMo. This amendment appeared in the January 3, 2005 *Missouri Register*. The final orders were not filed within ninety (90) days immediately following the comment period, therefore, this amendment is being repropose.

(6) “Open premises” as used in Chapter 338, RSMo means all premises accessible to employees in the regular course of any business which engages in practices regulated by this chapter, including, but not limited to, locked or otherwise secured storage areas that are used for the purpose of storing drugs, poisons, chemicals, or equipment used in any practice regulated by this chapter, and/or storage areas that are used for the purpose of storing records related to any practice regulated by this chapter.

[(6)](7) The public may obtain information from the board, or make submissions or requests to the board, by writing the executive director of the board. The information request shall be reviewed for appropriate action.

*AUTHORITY:* sections 338.110, 338.140 and 338.280, RSMo [1994] 2000. Original rule filed Dec. 31, 1975, effective Jan. 10, 1976. Amended: Filed April 14, 1982, effective July 11, 1982. Amended: Filed Jan. 3, 1990, effective May 11, 1990. Amended: Filed Aug. 25, 1996, effective April 30, 1996. Amended: Filed May 13, 2005.

*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 Pharmacy, Kevin Kinkade, Executive Director, PO Box 625, Jefferson City, MO 65102, via facsimile to (573) 526-3464 or e-mail at pharmacy@pr.mo.gov. 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 220—State Board of Pharmacy Chapter 2—General Rules

#### PROPOSED AMENDMENT

**4 CSR 220-2.010 Pharmacy Standards of Operation.** The board is proposing to delete the annotations immediately following this rule in the *Code of State Regulations*.

*PURPOSE:* This amendment deletes the annotations that immediately follow this rule in the *Code of State Regulations*. This amendment appeared in the January 3, 2005 *Missouri Register*. The final orders were not filed within ninety (90) days immediately following the comment period, therefore, this amendment is being repropose.

*AUTHORITY:* sections 338.010, 338.140, 338.240 and 338.280, RSMo 2000 and 338.210, RSMo Supp. [2002] 2004. Original rule filed July 18, 1962, effective July 28, 1962. For intervening history, please consult the *Code of State Regulations*. Amended: Filed May 13, 2005.

*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 Pharmacy, Kevin Kinkade, Executive Director, PO Box 625, Jefferson City, MO 65102, via facsimile to (573) 526-3464 or e-mail at [pharmacy@pr.mo.gov](mailto:pharmacy@pr.mo.gov). 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 220—State Board of Pharmacy Chapter 2—General Rules

#### PROPOSED AMENDMENT

**4 CSR 220-2.020 Pharmacy Permits.** The board is proposing to amend sections (1), (2), (3) and (9), add a new section (11), and delete the annotations immediately following this rule in the *Code of State Regulations*.

*PURPOSE:* This amendment allows for issuance of a temporary pharmacy permit, removes the thirty (30)-day grace period for filing of an application after a change of ownership occurs, and adds limited liability companies to what is considered a separate person concerning ownership. This amendment also deletes the annotations that immediately follow this rule in the *Code of State Regulations*. This amendment appeared in the January 3, 2005 *Missouri Register*. The final orders were not filed within ninety (90) days immediately following the comment period, therefore, this amendment is being repropose.

(1) [The fiscal year of the board shall be as provided by law.] All permits for the operation of a pharmacy shall expire on the date

specified by the director of the Division of Professional Registration [by appropriate rule] pursuant to 4 CSR 230-2.031.

(2) A pharmacy permit may be issued on the application of the owners. If the owner is a corporation [or partnership], an officer of the corporation [or a partner] must sign the application as the applicant. **If the owner is a partnership, a partner must sign the application as the applicant. If the owner is a limited liability partnership, a general partner must sign the application as the applicant. If the owner is a limited liability company, a member must sign the application as the applicant.** In the case where a pharmacy is owned and operated by a person(s) who is a licensed pharmacist and in active charge of the pharmacy, the application for permit can be made by either party.

(3) When a pharmacy changes ownership, the original permit becomes void on the effective date of the change of ownership. Before any new business entity resulting from the change opens a pharmacy for business, it must obtain a new permit from the board. [However, a grace period of thirty (30) days will be allowed after the change of ownership.] **A temporary license shall be issued once a completed application and fee have been received by the board. The effective date of the temporary license shall be the date the change of ownership is listed as effective on the application. Such license shall remain in effect until a permanent license is issued or denied by the board.**

(B) [A corporation is considered by law to be a separate person.] If a corporation owns a pharmacy, it is not necessary to obtain a new license if the owners of the stock change. [However, as a separate person, if the corporation begins ownership of a pharmacy or ceases ownership of that pharmacy, a new license must be obtained regardless of the relationship of the previous or subsequent owner to the corporation. It is not necessary to obtain a new license when ownership of the stock in the corporation changes.] **If a limited liability partnership or a limited liability company owns a pharmacy, it is not necessary to obtain a new license if the partners or members of the company change, as long as the partnership or company is not dissolved by that change.** It is necessary to file written notice with the State Board of Pharmacy within ten (10) days after [that] a change occurs in partners in a limited liability partnership, or in members in a limited liability company. This notification must be in writing and certified. **However, when a corporation, limited liability partnership, or limited liability company begins ownership of a pharmacy or transfers ownership of a pharmacy, a new license must be obtained regardless of the relationship between the previous and subsequent owners.**

(9) The following classes of pharmacy permits or licenses are hereby established:

(D) Class D: [Home Health] Non-Sterile Compounding. A pharmacy that provides services as defined in section 338.010, RSMo [for patients in a public or private residence who are under the supervision of a home health or hospice agency] **and provides a non-sterile compounded product as defined in 4 CSR 220-2.400(1) which comprises five percent (5%) or more of the annual prescription volume of the pharmacy;**

(H) Class H: Sterile Product Compounding. A pharmacy that provides services as defined in section 338.010, RSMo and provides a sterile pharmaceutical as defined in 4 CSR 220-2.200[(1)](11)(I) and [(15)](AA). Pharmacies providing sterile pharmaceuticals within the exemptions outlined in 4 CSR 220-2.200(25) shall not be considered a Class H pharmacy; [and]

(I) Class I: Consultant. A location where any activity defined in section 338.010, RSMo is conducted, but which does not include the procurement, storage, possession or ownership of any drugs from the location./; **and**

(11) Prescriptions processed by any classification of licensed pharmacy must be provided by a practitioner licensed in the United States authorized by law to prescribe drugs and who has performed a sufficient physical examination and clinical assessment of the patient. The use of a form, questionnaire and/or telephone interview to fulfill the examination or assessment of a patient shall not be considered sufficient to provide or execute a valid prescription.

*AUTHORITY: sections 338.140, RSMo 2000 and 338.220, RSMo Supp. [2001 and Omnibus State Reorganization Act of 1974 (Appendix B)] 2004. Original rule filed July 18, 1962, effective July 28, 1962. For intervening history, please consult the Code of State Regulations. Amended: Filed May 13, 2005.*

*PUBLIC COST: This proposed amendment will cost state agencies and political subdivisions approximately thirty-two dollars and thirty cents (\$32.30) annually for the life of the rule. It is anticipated that the costs will recur for the life of the rule, may vary with inflation and are expected to increase at the rate projected by the Legislative Oversight Committee.*

*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 Pharmacy, Kevin Kinkade, Executive Director, PO Box 625, Jefferson City, MO 65102, via facsimile to (573) 526-3464 or e-mail at [pharmacy@pr.mo.gov](mailto:pharmacy@pr.mo.gov). 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 220 - State Board of Pharmacy**  
**Chapter 2 - General Rules**  
**Proposed Rule - 4 CSR 220-2.020 Pharmacy Permits**  
 Prepared October 4, 2004 by the Division of Professional Registration

**II. SUMMARY OF FISCAL IMPACT**

Affected Agency or Political Subdivision	Estimated Annual Cost of Compliance
State Board of Pharmacy	\$32.30
<b>Total Annual Cost of Compliance for the Life of the Rule</b>	
	<b>\$32.30</b>

**III. WORKSHEET**

Expenditure of Money

CLASSIFICATION	Fee Amount	Number in Class	AGGREGATE COST
Temporary Permit	\$0.03	32	\$0.96
Envelope for Mailing Permit	\$0.16	32	\$5.12
Postage for Mailing Permit	\$0.37	32	\$11.84

**Total Expense and Equipment Cost**      **\$17.92**

The Licensure Technician I will process the change of ownership applications, update the division's licensing system, issue and mail the temporary pharmacy permit. The figures below represent the personal service costs paid by the State Board of Pharmacy for the temporary pharmacy permit process.

STAFF	ANNUAL SALARY	SALARY TO INCLUDE FRINGE BENEFIT	HOURLY SALARY	COST PER MINUTE	TIME PER REQUEST	COST PER REQUEST	TOTAL COST
Licensure Technician I	\$20,904	\$28,032	\$13.48	\$0.22	2 minutes	\$0.45	\$14.38

**Total Personal Service Costs**      **\$14.38**

**IV. ASSUMPTION**

- In FY03 the board received 185 pharmacy permit applications and approximately 32 of those were change of ownership applications. For the purposes of estimating fiscal impact, the board assumes that an average of 32 applications will be received annually.
- Pharmacy permit applications are currently received by the division's central processing unit. The board does not believe any additional time or resources will be needed for the processing of these applications. Therefore, no cost associated with the division's central processing unit were calculated into this fiscal note.
- Employee's salaries were calculated using their annual salary multiplied by 40.47% for fringe benefits and then were 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 the Licensure Technician I will spend on the processing change of ownership applications. The total cost was based on the cost per request multiplied by the estimated number of requests received on an annual basis.
- 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.

**Title 4—DEPARTMENT OF ECONOMIC  
DEVELOPMENT  
Division 220—State Board of Pharmacy  
Chapter 2—General Rules**

**PROPOSED AMENDMENT**

**4 CSR 220-2.050 Public Complaint Handling and Disposition Procedure.** The board is proposing to amend sections (1), (4) and (5).

*PURPOSE: This rule amends the text of the rule to be consistent with the terminology used by the board. This amendment appeared in the January 3, 2005 Missouri Register. The final orders were not filed within ninety (90) days immediately following the comment period, therefore, this amendment is being repropose.*

(1) The State Board of Pharmacy shall receive and process each complaint made against any *[licensed pharmacist or pharmacy possessing a valid permit,] licensee or registrant* or other person or entity, which complaint alleges certain acts or practices which may constitute one (1) or more violations of the provisions of Chapter 338, RSMo. Any member of the public, the profession or any federal, state or local official may make and file a complaint with the board. Complaints shall be received from sources outside Missouri and will be processed in the same manner as those originating within Missouri. No member of the State Board of Pharmacy shall file a complaint with this board while s/he holds that office, unless that member excuses him/herself from further board deliberations or activity concerning the matters alleged within that complaint. Any staff member or employee of the board may file a complaint pursuant to this rule in the same manner as any member of the public.

(4) Each complaint received under this rule shall be *[logged in a book maintained] recorded* by the board *[for that purpose]*. Complaints shall be logged in consecutive order as received. The *[logbook] record* shall contain *[a record of]* each complainant's name and address; the name and address of the subject(s) of the complaint; the date each complaint is received by the board; a brief statement of the acts complained of, *[including the name of any person injured or victimized by the alleged acts or practices; a notation whether the complaint resulted in its dismissal by the board or in formal charges being filed with the Administrative Hearing Commission;]* and the ultimate disposition of the complaint. This *[logbook] record* shall be a closed record of the board.

(5) *[Each complaint logged pursuant to this rule shall be acknowledged in writing. The acknowledgment shall state that the complaint is being investigated and shall be referred to the board or an appropriate board subcommittee for consideration following the investigation.]* The complainant *[subsequently]* shall be informed in writing as to whether the complaint has been dismissed by the board or is being referred to legal counsel for *[filing with the Administrative Hearing Commission or for other]* legal action. The complainant may be notified of the ultimate disposition of the complaint, excluding judicial appeals and may be provided with a copy of the decisions (if any) of the Administrative Hearing Commission and the board. The provisions of this section shall not apply to complaints filed by staff members or employees of the board, based upon information and belief, acting in reliance on third-party information received by the board.

*AUTHORITY: sections 338.140 and 338.280, RSMo 2000 and 620.010.15(6), RSMo Supp. [2001] 2004. Original rule filed Jan. II, 1982, effective June 1, 1982. For intervening history, please consult the Code of State Regulations. Amended: Filed May 13, 2005.*

*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 Pharmacy, Kevin Kinkade, Executive Director, PO Box 625, Jefferson City, MO 65102, via facsimile to (573) 526-3464 or e-mail at pharmacy@pr.mo.gov. 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 220—State Board of Pharmacy  
Chapter 5—Drug Distributor**

**PROPOSED AMENDMENT**

**4 CSR 220-5.030 Definitions and Standards for Drug Wholesale and Pharmacy Distributors.** The board is proposing to amend section (3) and delete section (10).

*PURPOSE: This amendment establishes a requirement that licensed drug distributors and pharmacy distributors report to the board office the finding of counterfeit drugs within seven (7) days of gaining knowledge of the problem, prohibits issuance of drug distributor licenses in residences or residential areas or to a location that shares physical space with a business not licensed and regulated by the state of Missouri and deletes section (10) relating to brokers/agents. This amendment appeared in the January 3, 2005 Missouri Register. The final orders were not filed within ninety (90) days immediately following the comment period, therefore, this amendment is being repropose.*

(3) Minimum standards of practice for drug distributors shall include the following:

(C) Appropriate housekeeping, sanitation, lighting, ventilation and humidity of all areas where drugs are stored must be maintained.

1. All aisles and walkways must be free and clear of debris, dirt or filth.

2. Dust shall be kept at low levels through adequate ventilation, cleaning procedures, or both.

3. All shelves and storage areas shall be kept free of debris, dirt, dust and filth.

4. Full cases of drug products shall be raised above floor level and placed on a pallet or similar device.

5. Upon receipt of legend drugs, each outside shipping container shall be visually examined for identity and to prevent the acceptance of contaminated prescription drugs or prescription drugs that are otherwise unfit for distribution. This examination shall be adequate to reveal container damage that would suggest possible contamination or other damage to the contents.

6. Each outgoing shipment shall be carefully inspected for identity of the prescription drug products and to ensure that there is no delivery of prescription drugs that have been damaged in storage or held under improper conditions.

7. Drugs stored in a facility or being processed for distribution must be physically separated at all times from articles, supplies or other drugs that are outdated, distressed, misbranded or adulterated. An area separate from drug storage must be used to store quarantined, nonusable substances or accumulated waste/garbage. Any prescription drugs whose immediate or sealed outer or sealed secondary containers have been opened or used shall be identified as such and

shall be quarantined and physically separated from other prescription drugs until they are either destroyed or returned to the supplier. If a drug is received or further distributed, either directly or through a secondary broker (paper) transaction, that is wholly or in part found to be counterfeit, a report which includes the name of the drug, quantity and lot number(s) must be forwarded to the Board of Pharmacy within seven (7) days of gaining knowledge of the transaction. Any recall of a product that is initiated by the Food and Drug Administration (FDA) or by a vendor licensed with the state of Missouri shall not be subject to the reporting requirement.

8. Flammable articles must be stored separately and away from drug products held for later wholesale distribution.

9. Drugs which may be held for later distribution that are labeled for veterinary use must be stored separately from those drugs that are to be distributed for human use.

10. Procedures must be in place to prevent, control and alleviate infestation by insects, rodents, birds or vermin of any kind.

11. Appropriate sewage disposal and a hot and cold water supply must be available.

12. The outside perimeter of the premises shall be well-lighted.

13. All facilities shall be equipped with an alarm system to detect entry after hours.

14. All facilities shall be equipped with a security system that will provide suitable protection against theft and diversion. When appropriate, the security system shall provide protection against theft or diversion that is facilitated or hidden by tampering with computers or electronic records;

(F) The labeling of drug products held for wholesale distribution must conform to requirements as set forth by the manufacturer, [Food and Drug Administration (FDA)] FDA, the USP and section 338.059.2, RSMo;

(M) Wholesale drug and pharmacy distributors shall establish, maintain and adhere to written policies and procedures, which shall be followed for the receipt, security, storage, inventory and distribution of prescription drugs, including policies and procedures for identifying, recording and reporting losses or thefts and for correcting all errors and inaccuracies in inventories. Drug distributors shall include in their written policies and procedures the following:

1. A procedure where the oldest approved stock of a prescription drug product is distributed first. The procedure may permit deviation from this requirement if the deviation is temporary and appropriate;

2. A procedure to be followed for handling recalls and withdrawals of prescription drugs. This procedure shall be adequate to deal with recalls and withdrawals due to any—

A. Action initiated at the request of the FDA or other federal, state, or local law enforcement or other government agency, including the Board of Pharmacy;

B. Voluntary action by the manufacturer to remove defective or potentially defective drugs from the market; or

C. Action undertaken to promote public health and safety by replacing existing merchandise with an improved product or new package design;

3. A procedure to ensure that drug distributors prepare for, protect against and handle any crisis that affects the security or operation of any facility in the event of strike, fire, flood or other natural disaster, or other situations of local, state or national emergency; and

4. A procedure to ensure that any outdated prescription drugs shall be segregated from other drugs and either returned to the manufacturer or destroyed. This procedure shall provide for written documentation of the disposition of outdated prescription drugs. This documentation shall be maintained for three (3) years after disposition of the outdated drugs; *[and]*

(N) Drug distributors will be responsible for security procedures for the delivery of drugs from the wholesale facility to the destination site of all drug shipments./.; **and**

**(O) No drug distributor license shall be issued to any location,**

**regardless of zoning, that shares an address and/or physical space with a business not related to the distribution of prescription drugs or drug-related devices, or not licensed and regulated by the state of Missouri.**

*[(10) Brokers, their agents and employees, who act only in the capacity of an agent who arranges or negotiates agreements or contracts for the transfer of drugs or drug related devices and do not take actual possession of the drugs or drug related devices are exempt from maintaining any equipment or physical location requirements involved in the actual storage and distribution of drugs. Brokers shall be responsible for all record keeping requirements as outlined in subsections (3)(I), (J), (K) and (L).]*

*AUTHORITY: sections 338.333, 338.343 and 338.350, RSMo 2000. Original rule filed Feb. 4, 1991, effective June 10, 1991. Amended: Filed Jan. 27, 1995, effective Sept. 30, 1995. Amended: Filed March 15, 2000, effective Sept. 30, 2000. Amended: Filed Nov. 1, 2000, effective June 30, 2001. Amended: Filed May 13, 2005.*

*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 Pharmacy, Kevin Kinkade, Executive Director, PO Box 625, Jefferson City, MO 65102, via facsimile to (573) 526-3464 or e-mail at [pharmacy@pr.mo.gov](mailto:pharmacy@pr.mo.gov). 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 10—Land Reclamation Commission Chapter 10—Permit and Performance Requirements for Industrial Mineral Open Pit and In-Stream Sand and Gravel Operations

### PROPOSED RULE

#### 10 CSR 40-10.085 Land Reclamation Commission Appeals and Requests for Hearings

*PURPOSE: This rule contains all procedural regulations for all contested cases heard by the commission or assigned to a hearing officer by the commission.*

(1) Subject. This rule contains all procedural regulations for all contested cases heard by the commission or assigned to a hearing officer by the commission.

(2) Definitions. As used in this rule, the following terms mean:

(A) Commission—The Missouri Land Reclamation Commission;

(B) Department—The Department of Natural Resources, which includes the director thereof, or the person or division or program within the department delegated the authority to render the decision, order, determination, finding, or other action that is the subject of an initial pleading before the commission;

(C) Hearing—Any presentation to, or consideration by, the commission or hearing officer of evidence or argument on an initial pleading, motion or application;

(D) Hearing officer—The person or agency appointed by the commission to manage all delegated proceedings relating to the case;

(E) Initial pleading—A written appeal, request for hearing, or other document that initiates a contested case. An initial pleading shall be deemed to include subsequent amendments allowed by the presiding officer;

(F) Person—An individual, partnership, copartnership, firm, company, public or private corporation, association, joint stock company, trust, estate, political subdivision or any agency, board, department or bureau of the state or federal government or any other legal entity whatever, which is recognized by law as the subject of rights and duties;

(G) Petitioner—The party filing the initial pleading;

(H) Presiding officer—The hearing officer for proceedings delegated by the commission, or the commission for proceedings not delegated to a hearing officer;

(I) Respondent—The department and any person later joined as respondent;

(J) Stay—A suspension of any action from which petitioner is seeking relief pending the final determination in the case.

### (3) Appointment of Hearing Officers.

(A) As authorized by statute, in lieu of presiding over a hearing directly, the commission may select any of the following persons to preside over the hearing of an initial pleading—

1. Any one (1) or several members of the commission;
2. The Missouri Administrative Hearing Commission; or
3. An attorney qualified to practice in Missouri.

(B) The appointment, as authorized by statute and approved by the commission either as a general practice or on a case-by-case basis, may be made as follows:

1. By the chairman of the commission within the chairman's discretion;
2. By a vote of the majority of the commission; or
3. By the parties from a list of available hearing officers either by consensus or, when practical, by process of elimination that allows the parties, first the department and then the petitioner, an equal opportunity to strike names.

### (4) Role of the Hearing Officer.

(A) Upon appointment, the department shall provide the hearing officer a letter confirming the appointment and copies of—

1. The initial pleading;
2. The written decision, order, determination, finding, or other action that is the subject of the initial pleading. This rule may be satisfied by providing a copy of the specific portion or portions of the action, such as a permit, that is contested;
3. Any entry of appearance by an attorney representing a party and any answer already filed with the commission; and
4. The names, addresses, phone and fax numbers of the parties or their attorneys, if this information is not already included in the above documents.

(B) The hearing officer has full authority to make rulings or issue orders on all matters that may arise except that the hearing officer shall not have the authority to render a final disposition on either jurisdictional grounds or the merits of a case that is not settled by the parties or voluntarily dismissed by the petitioner.

(C) For purposes of determining the final disposition of a cause on the basis of either the merits or the commission's jurisdiction, the hearing officer shall prepare a recommended decision, in writing, including findings of fact, conclusions of law, and a determination as to relief, for the commission's consideration. The hearing officer shall return the recommendation and the complete record of the proceedings in the cause to the commission.

(D) Upon receipt of the hearing officer's recommendation and the record in the case, the commission shall—

1. Distribute the hearing officer's recommendation to the parties or their counsel;
2. Allow the parties or their counsel an opportunity to submit written arguments regarding the recommendation;

3. Allow the parties or their counsel an opportunity to present oral arguments before the commission makes the final determination;

4. Complete its review of the record and deliberations as soon as practicable; the commission members may confer with the hearing officer during deliberations;

5. Deliberate and vote upon a final, written determination during an open meeting; and

6. Issue its final, written determination as soon as practicable.

### (5) Computation of Time.

(A) In computing any period of time prescribed or allowed by this rule or by order of the presiding officer, the day of the act, event or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day that is neither a Saturday, Sunday nor legal holiday.

(B) Except for any period of time that establishes the commission's jurisdiction, the presiding officer may extend the time set by this rule either before or after the time period has expired.

(C) A party may move for an extension of the time set by this rule or by the presiding officer. The motion shall be in writing and shall state whether any party objects to the extension or that efforts to contact the parties have been futile.

### (6) Practice by a Licensed Attorney; When Required.

(A) Any individual may present that individual's own case without a licensed attorney.

(B) Any individual may file an initial pleading on behalf of another person.

(C) Except as set forth in subsection (6)(B) of this rule, only a licensed attorney may represent any other person, including a corporation or other legal entity. The filing of any document with the presiding officer by a licensed attorney shall be deemed an entry of appearance. An attorney not authorized to practice in Missouri shall enter an appearance in accordance with Missouri Supreme Court Rules.

### (7) Notice of Initiation of the Case.

(A) The department shall promptly mail a notice of institution of the case to all necessary parties, if any, and to all persons designated by the moving party and to any other persons to whom the department may determine that notice should be given. The department shall keep a permanent record of the persons to whom such notice was sent and of the addresses to which sent and the time when sent. Where a case would affect the rights, privileges or duties of a large number of persons whose interests are sufficiently similar that they may be considered as a class, notice may in a proper case be given to a reasonable number thereof as representatives of such class. In any case where the name or address of any proper or designated party or person is not known to the agency, and where notice by publication is permitted by law, then notice by publication may be given in accordance with any rule or regulation of the agency or if there is no such rule or regulation, then, in a proper case, the agency may by a special order fix the time and manner of such publication.

(B) The notice of institution of the case to be mailed as provided in this section shall state in substance:

1. The caption and number of the case;
2. That a writing seeking relief has been filed in such case, the date it was filed, and the name of the party filing the same;
3. A brief statement of the matter involved in the case unless a copy of the writing accompanies said notice;
4. Whether an answer to the writing is required, and if so the date when it must be filed;
5. That a copy of the writing may be obtained from the department, giving the address to which application for such a copy may be made. This may be omitted if the notice is accompanied by a copy of such writing; and

6. The location in the *Code of State Regulations* of the rules of the commission regarding discovery or a statement that the department shall send a copy of such rules on request.

(C) Unless the notice of hearing hereinafter provided for shall have been included in the notice of institution of the case, the agency shall, as promptly as possible after the time and place of hearing have been determined, mail a notice of hearing to the moving party and to all persons and parties to whom a notice of institution of the case was required to be or was mailed, and also to any other persons who may thereafter have become or have been made parties to the proceeding. The notice of hearing shall state:

1. The caption and number of the case; and
2. The time and place of hearing.

(D) No hearing in a contested case shall be had, except by consent, until a notice of hearing shall have been given substantially as provided in this section, and such notice shall in every case be given a reasonable time before the hearing. Such reasonable time shall be at least ten (10) days except in cases where the public morals, health, safety or interest may make a shorter time reasonable; provided that when a longer time than ten (10) days is prescribed by statute, no time shorter than that so prescribed shall be deemed reasonable.

#### (8) Service of Filings Other Than the Initial Pleading.

(A) Unless otherwise provided by these rules or by other law, any party to a proceeding before the commission or any person who seeks to become a party shall serve upon the presiding officer and all attorneys of record and unrepresented parties a copy of any document or item the party files.

##### (B) Methods of Service.

1. A person may serve a document on an attorney by—
  - A. Delivering it to the attorney;
  - B. Leaving it at the attorney's office with a secretary, clerk or attorney associated with or employed by the attorney served;
  - C. Mailing it to the attorney's last known address; or
  - D. Facsimile transmitting (faxing) it to the attorney's last known fax number.
2. A person may serve a document on an unrepresented party by—
  - A. Delivering it to the party;
  - B. Mailing it to the party's last known address; or
  - C. Faxing it to the party's last known fax number.

(C) Service by mailing is complete upon placing in the mail. Service by fax is complete upon its transmission.

(D) Any document or item filed shall contain or be accompanied by a certification of how and when the filing party has met the provisions of this section.

(E) The presiding officer, after due notice, may waive the requirements of this section either on its own motion or on the motion of any party.

(F) The requirements of this section shall not apply to an initial pleading.

#### (9) Filing of Documents; Fax Filing.

(A) A party shall file a document with the presiding officer at the presiding officer's principle business office. Filings may be accomplished by—

1. Registered or certified mail. A document filed by registered or certified mail is deemed filed on the date shown on the United States Post Office records;

2. Electronic facsimile transmission (fax). A document filed by fax is deemed filed at the time the presiding officer receives a fax of the document. If a document arrives by fax after 5:00 p.m. and before 12:00 midnight or on a Saturday, Sunday or legal holiday, it is filed on the presiding officer's next business day, unless the presiding officer orders otherwise;

3. Actual delivery of a hard copy; or

4. Any other means as authorized by the Missouri Rules of Civil Procedure.

(B) A party filing by fax shall—

1. Notify the presiding officer in advance, if possible, of its intention to file the document by fax;

2. Fax the document to the presiding officer's dedicated fax number;

3. Fax the document, if possible, to all other parties having electronic facsimile equipment. If unable to fax, a party shall notify all other parties of its intention to file the document by fax. The notice need not be in writing. A good faith attempt at compliance shall satisfy the requirements of this subsection;

4. Send the original signed document to the presiding officer as the presiding officer so orders;

5. Certify in the documents—

A. The method of notice used to fulfill the requirements of paragraph (9)(B)3. of this rule; and

B. Compliance with the requirements of paragraph (9)(B)4. of this rule; and

6. Send a copy of the document to all parties. The presiding officer may order the party to send a copy of the document to any party by overnight mail.

#### (10) Stays.

(A) Scope and Content. The presiding officer may stay or suspend any action of the department pending the commission's findings and determination in the case. The presiding officer may require a bond or impose other conditions.

1. All motions for stay of the action from which petitioner is appealing shall be in writing.

2. The movant shall include in the motion:

A. The full name, address and telephone number of movant, any attorney representing movant and the respondent;

B. A clear heading, Motion for Stay;

C. Facts showing why the commission should grant the stay, set forth in numbered paragraphs, each of which shall contain, as far as practical, a single set of circumstances; and

D. A copy of any written notice of the action from which the petitioner is appealing.

3. The movant or movant's legal counsel shall sign the motion.

(B) The movant shall file the original and one (1) copy of the motion for stay with the presiding officer.

(C) The presiding officer, upon either party's request, shall hold or, on its own initiative, may hold an evidentiary hearing on whether to issue or dissolve a stay order.

(D) The denial of a motion for stay shall not prejudice the movant's initial pleading on the merits.

(E) The stay order shall remain effective until the commission finally disposes of the case unless the commission orders otherwise.

#### (11) Form of Initial Pleadings.

(A) In General. An initial pleading shall be in writing and shall include:

1. The full name, address and telephone number of—

A. Petitioner; and

B. Any attorney representing petitioner;

2. An explanation of the relief sought and the reason for requesting it. The presiding officer shall construe the provisions of this section liberally. The presiding officer shall have the discretion to order the petitioner to amend the initial pleading by providing more detailed information regarding the relief sought and the basis for that relief before allowing the matter to proceed.

(B) Petitioner or petitioner's legal counsel shall sign the initial pleading.

(C) The initial pleading is deemed filed the day it is received by the commission.

#### (12) Answers.

(A) The respondent shall file an answer.

(B) An answer shall—

1. Be in writing;
  2. Admit those portions of the initial pleading which the respondent believes are true and deny those portions that the respondent believes are not true and state that the respondent is without sufficient knowledge to admit or deny the portions not admitted or denied;
  3. Assert any specific failure of the initial pleading to comply with this rule, or any other defenses; and
  4. Be signed by the respondent or the respondent's attorney.
- (C) The respondent shall file the answer within thirty (30) days after service of the notice of initial pleading.

(13) Intervention.

(A) The presiding officer shall follow Rule 52.12 of the Missouri Rules of Civil Procedure in determining any motion to intervene.

(B) A motion to intervene shall—

1. Be in writing;
2. Set forth facts showing that the person is entitled to intervene;
3. Be signed by the person or the person's attorney; and
4. Be accompanied by an initial pleading or answer.

(14) Discovery.

(A) Any party may conduct discovery in the manner provided for in the Rules of Civil Procedure adopted by the Supreme Court of Missouri.

(B) Written Interrogatories; Production of Documents or Things or Permission to Enter Upon Land or Other Property, For Inspection and Other Purposes.

1. A party serving written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes, shall include a certificate of service in substantially the following form:

I served the original and (*number of*) copies of these (*written interrogatories/production of documents or things or permission to enter upon land or other property, for inspection and other purposes, requests for admission*) on (*name of parties*) this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

(Signature) \_\_\_\_\_

2. The party conducting discovery shall file a copy of the certificate with the presiding officer. The party shall not file written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes with the presiding officer unless the presiding officer so orders. The party may file requests for admissions with the presiding officer.

3. The party conducting discovery shall serve the original discovery on the interrogated party's counsel or on an unrepresented interrogated party, and copies on all other counsel or unrepresented parties.

4. Requests for admission and interrogatories shall include appropriate spaces for answers or objections.

5. The party responding to requests for admissions or interrogatories shall complete them by typewriting or printing the answer or objection to each question in the space provided. If the space is insufficient, the party shall reply by affidavit, clearly indicate so in the space provided, and attach the affidavit to the interrogatories or requests for admissions. Each response shall include a certificate of service in substantially the following form:

I served the original of these completed (*written interrogatories/requests for admission*) on (*name of party*) and sent (*number of*) copies to (*name of parties*) this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

(Signature) \_\_\_\_\_

6. The responding party shall file the certificate of service with the presiding officer and shall not file the response unless the presiding officer so orders. The responding party shall serve the original completed response on the interrogating party and copies on all other parties.

(C) Whenever a party files a motion to compel compliance with any discovery request, to sanction another party for failing to respond or responding inadequately to any discovery request, or alleging violation of any discovery rule, the moving party shall certify in its motion that it has made reasonable efforts to contact the party who is the subject of the motion and inform the presiding officer as to what steps the moving party has taken to resolve informally the discovery dispute or alleged discovery rule violation. The party seeking relief shall attach a copy of any disputed discovery to the motion to compel.

(D) No discovery or response to discovery shall be considered as evidence unless it is admitted into evidence upon hearing, or authenticated and attached to a motion for disposition without hearing, as an exhibit.

(E) No discovery order that permits entrance upon land or inspection of property without permission of the owner, or purports to hold any person in contempt shall be enforceable, unless the party seeking such enforcement obtains an order of the circuit court of the county in which the land or property is located, or the circuit court of Cole County, at the option of the person seeking enforcement.

(15) Sanctions.

(A) The presiding officer may impose a sanction upon any party for conduct including, without limitation, such party's failure to:

1. Comply with any rule of the commission or order of the presiding officer, including failure to file an answer;
2. Appear at any hearing; or
3. Apprise the presiding officer of a current mailing address.

(B) Sanctions available under this rule include without limitation:

1. Striking all or any part of the party's pleading;
2. Deeming all or any part of an opposing party's pleading admitted; or
3. Barring or striking all or any evidence on any issue.

(C) The presiding officer shall determine whether to impose any sanction, and the appropriate degree of such sanction, based on the facts of each case.

(16) Disposing of a Case Without a Hearing.

(A) Settlement. The parties may settle all or any part of the case without any action by the commission or by requesting agreed upon action by the commission, where such settlement is permitted by law. If the parties settle all of the case, petitioner shall file a notice of dismissal as described in subsection (16)(B) of this rule or a request for stipulated action by the commission.

(B) Notice of Dismissal. Petitioner may voluntarily dismiss the initial pleading at any time. Petitioner shall effect a voluntary dismissal by filing a notice of dismissal and is effective on the date petitioner files it, without any action by the commission.

(C) The commission may grant a motion for decision without hearing if the parties stipulate to undisputed facts and the commission determines that such facts entitle any party, including a party who did not file such motion, to a favorable decision on all or any part of the case as a matter of law.

(D) Involuntary Dismissal. Involuntary dismissal means a disposition of the case that does not reach the merits of the complaint. Grounds for involuntary dismissal of the complaint include without limitation:

1. Lack of jurisdiction; and
2. The bases for a sanction set forth in this rule.

(17) Prehearing Conferences. On its own motion or that of any party, the presiding officer may order a prehearing conference to discuss matters pertinent to the case. All parties or their legal counsels,



or both shall participate in the prehearing conference and be prepared to discuss the matters, including the possibilities for settlement.

(18) Hearings on Motions. The presiding officer may rule upon any motion on the basis of the record and without oral argument. The presiding officer shall hear oral argument or evidence only upon a party's written motion or upon the presiding officer's own motion.

(19) Hearings; Default.

(A) Notice. The hearing officer shall serve an initial notice of hearing on all parties or their counsel by regular mail. The notice of hearing shall state the date, time and place of the hearing and shall be served at least ten (10) days prior to the hearing. The presiding officer may serve any other notice of hearing by any other method allowed by law.

(B) Location. The hearing officer shall hold all hearings in Jefferson City, Missouri, except as otherwise provided by statute or when a party shows good cause to hold the hearing elsewhere within the state.

(C) Date.

1. First setting. Unless otherwise provided by statute or with the consent of the parties, the hearing officer shall not conduct any hearing on less than ten (10) days notice.

2. Resettings. The hearing officer may reset the hearing by amended notice. If the reset date is later than the first setting, the hearing officer may hold the hearing fewer than ten (10) days from the date of the issuance of the amended notice.

(D) Expedited Hearings and Continuances. The hearing officer may expedite or continue the hearing date upon notice to the parties except as otherwise provided by law. Any party may file a motion for an expedited hearing or a continuance. The motion shall state good cause.

(E) Order of Proof. Regardless of which party has the burden of proof petitioner shall present evidence first unless the presiding officer orders otherwise.

(F) Default. If a party fails to appear at hearing, the party shall be in default.

1. If petitioner defaults, and petitioner has the burden of proof, the commission may dismiss the case for failure to prosecute.

2. If any party defaults, any other party may present evidence, and the defaulting party shall have waived any objection to such evidence. Such evidence shall constitute the sole evidentiary basis for disposition of the case, unless the commission orders otherwise.

(20) Transcripts.

(A) The court reporter shall file a transcript of all hearings with the commission. Any person may purchase a copy of the transcript through the court reporter.

(B) Any party may move to correct the transcript no more than ninety (90) days after the court reporter files the transcript. The commission on its own motion may order the hearing reporter to correct the transcript any time before the commission finally disposes of the case.

(21) Fees and Expenses. A party may apply for litigation fees and expenses as authorized by law. Such application shall be an initial pleading in a separate case. The case for fees and expenses shall be governed by this rule.

*AUTHORITY: sections 444.767, 444.772 and 444.784, RSMo Supp. 2004. Original rule filed April 26, 2005.*

*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 Land Reclamation Commission, Larry P. Coen, Staff Director, PO Box 176, 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 11—DEPARTMENT OF PUBLIC SAFETY  
Division 40—Division of Fire Safety  
Chapter 5—Elevators**

**PROPOSED AMENDMENT**

**11 CSR 40-5.110 Fees and Penalties.** The Missouri Division of Fire Safety is amending subsection (1)(A) by distinguishing between the plan review fee charged for an elevator versus a platform lift or stair lift.

*PURPOSE: This amendment will provide a reduced fee for plan reviews of platform lifts or stair lifts by separating these devices from reference to an elevator.*

(1) New Construction.

(A) Plan Review Fee. The following plan review fees shall be paid to the department for each elevator equipment to be installed within its governing authority, excluding any elevator equipment being installed in the authorized representatives designated areas. In such cases the fee schedule would be as defined by and paid to the authorized representative. The plan review fee for each elevator is a base fee of one hundred fifty dollars (\$150) plus twenty-five dollars (\$25) for each opening. **The plan review fee for each platform lift or stair lift is a base fee of seventy-five dollars (\$75) plus twelve dollars and fifty cents (\$12.50) for each opening.**

*AUTHORITY: section 701.355, RSMo 2000. Original rule filed Aug. 26, 1998, effective July 1, 1999. Amended: Filed Feb. 20, 2003, effective Aug. 30, 2003. Amended: Filed April 27, 2005.*

*PUBLIC COST: This proposed amendment will cost state agencies or political subdivisions five thousand one hundred dollars (\$5,100) 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 the proposed amendment with the Division of Fire Safety, PO Box 844, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.*

**FISCAL NOTE  
PUBLIC COST**

**I. RULE NUMBER**

Rule Number and Name:	11 CSR 40-5.110 Fees and Penalties
Type of Rulemaking:	Proposed Rule Amendment

**II. SUMMARY OF FISCAL IMPACT**

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
State of Missouri	\$5100.00

**III. WORKSHEET**

In the year 2004 there were 51 plan reviews for platform and chair lifts @ a cost of \$200.00 per review with a total cost of \$10,200.00. Based on this number of reviews a reduction of fees collected by the Division will be approximately \$5100.00.

**IV. ASSUMPTIONS**

The proposed amendment will reduce the cost of plan reviews for platform and chair lifts \$100.00 per review. Based on the number of plans submitted to the State of Missouri in 2004 for review it is estimated that the State will lose approximately \$5100.00 in revenue to the department.

**Title 13—DEPARTMENT OF SOCIAL SERVICES  
Division 70—Division of Medical Services  
Chapter 3—Conditions of Provider Participation,  
Reimbursement and Procedure of General Applicability**

**PROPOSED AMENDMENT**

**13 CSR 70-3.020 Title XIX Provider Enrollment.** The division is amending section (9) and adding one new section.

*PURPOSE:* This amendment clarifies that the Missouri Medicaid program only pays for services performed by enrolled providers.

(9) The provider is responsible for all services provided and all claims filed using her/his Medicaid provider number regardless to whom the reimbursement is paid and regardless of *[who]* whom in her/his employ or services produced or submitted the Medicaid claim or both. The provider is responsible for submitting proper diagnosis codes, procedure codes, and billing codes. When the length of time actually spent providing a service (begin and end time) is required to be documented, the provider is responsible for documenting such length of time by **documenting the starting clock time and the end clock time**, except for services as specified pursuant to 13 CSR 70-91.010(4)(A), Personal Care Program, regardless to whom the reimbursement is paid and regardless of whom in the provider's employ or services produced or submitted the Medicaid claim.

**(11) Medicaid reimbursement shall not be made for any services performed by an individual not enrolled as a Missouri Medicaid provider, except for those services performed by the employee of the enrolled provider who is acting within their scope of practice and under the direct supervision of the enrolled provider. For example, an enrolled psychology or therapy provider may only bill for services that they actually perform. Psychology, therapy, and psychiatric services reimbursed through the physician program do not allow billing for supervised services.**

*AUTHORITY:* sections 208.153, 208.159 and 208.201, RSMo 2000. This rule was previously filed as 13 CSR 40-81.165. Original rule filed June 14, 1982, effective Sept. 11, 1982. Amended: Filed July 30, 2002, effective Feb. 28, 2003. Amended: Filed April 29, 2005.

*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 Office of the Director, Division of Medical Services, 615 Howerton Court, Jefferson City, MO 65109. To be considered, comments must be received within thirty (30) days after publication of this notice 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.

**Title 13—DEPARTMENT OF SOCIAL SERVICES  
Division 70—Division of Medical Services  
Chapter 3—Conditions of Provider Participation,  
Reimbursement and Procedure of General Applicability**

**PROPOSED RULE**

**13 CSR 70-3.160 Electronic Submission of Medicaid Claims**

*PURPOSE:* This rule implements the requirement that claims for reimbursement by the Missouri Medical Assistance Program (Medicaid) be submitted electronically.

(1) "Electronic claim" means a claim that is submitted via electronic media.

(2) Electronic submission of Medicaid claims for services rendered under the Medicaid program is required. A Missouri Medicaid claim may be paid only if submitted as an electronic claim for processing by the Medicaid Management Information System.

(A) To utilize the Internet for electronic claim submissions the provider must apply online via the Application for Missouri Medicaid Internet Access Account link.

(B) Each user is required to complete this online application to obtain a user ID and password.

(C) The enrolled Medicaid provider shall be solely responsible for the accuracy and authenticity of said electronic media claims submitted, whether submitted directly or by an agent.

(D) The enrolled Medicaid provider shall agree that services described on the electronic media claim are true, accurate, and complete.

(E) The enrolled Medicaid provider certifies that services described on the electronic media claim are personally rendered by the provider.

(3) State required supporting documentation (paper attachments) must be maintained at the place of service for auditing purposes.

(A) The failure of the enrolled Medicaid provider to keep or furnish, or both, such information shall constitute grounds for the disallowance and recoupment of all applicable charges or payments.

(B) The enrolled Medicaid provider shall be responsible for refund of any payments that result from claims being paid inappropriately or inaccurately.

(C) The records shall be maintained for five (5) years, unless the records are the subject of an audit or litigation. Records that are the subject of an audit or litigation shall be maintained until the conclusion of the audit or litigation.

(4) The provider shall establish and maintain a file containing the signature of each recipient of services furnished by the Medicaid enrolled provider or, when applicable, the signature of a responsible person made on behalf of the recipient.

(A) The failure of the enrolled Medicaid provider to keep or furnish, or both, such information shall constitute grounds for the disallowance and recoupment of all applicable charges or payments.

(B) The enrolled Medicaid provider shall be responsible for refund of any payments that result from claims being paid inappropriately or inaccurately.

(C) The records shall be maintained for five (5) years, unless the records are the subject of an audit or litigation. Records that are the subject of an audit or litigation shall be maintained until the conclusion of the audit or litigation.

(5) The provider shall keep such records, including original source documents, as are necessary to disclose fully the nature and extent of services provided to recipients under the Missouri Medical Assistance (Medicaid) Plan and to furnish information regarding any payment of claims for providing such services as the Division of Medical Services, or its designee, may request. The enrolled Medicaid provider agrees that the service was medically necessary for the treatment of the condition as indicated by the diagnosis and shall maintain records, including source documents, to verify such.

(A) The failure of the enrolled Medicaid provider to keep or furnish, or both, such information shall constitute grounds for the disallowance and recoupment of all applicable charges or payments.

(B) The enrolled Medicaid provider shall be responsible for refund of any payments that result from claims being paid inappropriately or inaccurately.

(C) The records shall be maintained for five (5) years, unless the records are the subject of an audit or litigation. Records that are the subject of an audit or litigation shall be maintained until the conclusion of the audit or litigation.

(6) The enrolled Medicaid provider must identify and bill third party insurance and Medicare coverage prior to billing Medicaid.

(7) Sufficient security procedures must be in place to ensure that all transmissions of documents are authorized and protect recipient specific data from improper access.

(8) The provider is responsible for assuring that electronic billing software purchased from any vendor or used by a billing agent complies with billing requirements of the Medicaid program and shall be responsible for modifications necessary to meet electronic billing standards.

(9) The enrolled Medicaid provider agrees to accept as payment in full the amount paid by Medicaid for the electronic media claims submitted for payment.

(10) The submission of an electronic media claim is a claim for Medicaid payment.

(A) Any person who, with intent to defraud or deceive, makes, causes to be made, or assists in the preparation of any false statement, misrepresentation or omission of a material fact in any claim or application for any claim, regardless of amount, knowing the same to be false, is subject to civil or criminal sanctions or both under all applicable state and federal statutes.

*AUTHORITY: sections 208.153 and 208.201, RSMo 2000. Original rule filed April 29, 2005.*

*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 Office of the Director, Division of Medical Services, 615 Howerton Court, Jefferson City, MO 65109. To be considered, comments must be received within thirty (30) days after publication of this notice 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.*

**Title 13—DEPARTMENT OF SOCIAL SERVICES  
Division 70—Division of Medical Services  
Chapter 4—Conditions of Recipient Participation,  
Rights and Responsibilities**

**PROPOSED AMENDMENT**

**13 CSR 70-4.080 Children's Health Insurance Program.** The division is amending sections (1), (5)–(9), and (13)–(15), adding a new section (10), and deleting sections (11) and (12).

*PURPOSE: This amendment changes the co-payment and premium requirements of the Children's Health Insurance Program pursuant to Senate Substitute for Senate Bill 539 enacted by the 93rd General*

*Assembly, 2005. The amendment also changes the waiting period for coverage of any child identified as having special health care needs pursuant to House Bill 1453 enacted by the 92nd General Assembly, 2004.*

(1) Definitions.

*[(A) Available income. For the purpose of this rule available income shall be defined as the household's total gross income compared to one hundred eighty-five percent (185%), two hundred twenty-five percent (225%) and three hundred percent (300%) of the federal poverty level for the household size.*

*(B) Cost sharing. Payment of co-payments and premiums.]*

*[(C)] (A) Children. Persons up to nineteen (19) years of age.*

*[(D)] (B) Health insurance. Any hospital and medical expense incurred policy, nonprofit health care service for benefits other than through an insurer, nonprofit health care service plan contract, health maintenance organization subscriber contract, preferred provider arrangement or contract, or any other similar contract or agreement for the provision of health care benefits. The term "health insurance" does not include short-term, accident, fixed indemnity, limited benefit or credit insurance, coverage issued as a supplement to liability insurance, insurance arising out of a workers' compensation or similar law, automobile medical-payment insurance, or insurance under which benefits are payable with or without regard to fault and which is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.*

*(5) Parent(s) and guardian(s) of uninsured children with [available] gross income above [two hundred twenty-five percent (225%)] one hundred fifty percent (150%) and below three hundred percent (300%) of the federal poverty level must certify, as a part of the application process, that the child does not have access to affordable employer-sponsored health insurance or other affordable health insurance available to the parent(s) or guardian(s) through their association with an identifiable group (for example, a trade association, union, professional organization) or through the purchase of individual health insurance coverage.*

*[(6) An uninsured child/children with available income less than two hundred twenty-six percent (226%) of the federal poverty level shall be eligible for services(s) from the date the application is received. No service(s) will be covered prior to the date the application is received or September 1, 1998, whichever is later.]*

*[(7)] (6) An uninsured child/children with [available] gross income above [two hundred twenty-five percent (225%)] one hundred fifty percent (150%) and below three hundred percent (300%) of the federal poverty level shall be eligible for services(s) thirty (30) calendar days after the application is received if the required premium has been received.*

*(A) Parent(s) or guardian(s) of uninsured children with [available] gross income above [two hundred twenty-five percent (225%)] one hundred fifty percent (150%) and below three hundred percent (300%) of the federal poverty level are responsible for a monthly premium equal to the statewide weighted average child/children premium required by the Missouri Consolidated Health Care Plan not to exceed five percent (5%) of the family's gross income.*

*(B) The premium must be paid prior to service delivery.*

*(C) The premium notice shall include information on what to do if there is a change in [available] gross income.*

*(D) No service(s) will be covered prior to the effective date which is thirty (30) calendar days after the date the application is received.*

*[(8)] (7) If the parent or guardian discontinues payment of premiums, a past due notice shall be sent requesting remittance within twenty (20) calendar days from date of the letter. Failure to make*

payment shall result in the child's ineligibility for coverage for the following six (6) months.

*[(9)] (8)* Premium adjustments, based on changes in the Missouri Consolidated Health Care Plan, shall be calculated yearly in March with an effective date of July 1 of the same calendar year. Individuals shall be notified of the change in premium amount at least thirty (30) days prior to the effective date.

*[(10)] (9)* The six (6)-month waiting period and thirty (30)-calendar-day delay in service delivery is not applicable to a child/children already participating in the program when the parent's or guardian's income changes. Coverage shall be extended for thirty (30) calendar days to allow for premium collection and to ensure continuity in coverage. Eligibility shall be discontinued for the child/children if the premium payment is not made within the thirty (30)-day extension.

**(10) Any child identified as having "special health care needs," defined as a condition which left untreated would result in the death or serious physical injury of a child, who does not have access to affordable employer-subsidized health care insurance shall not be required to be without health care coverage for six (6) months in order to be eligible for services under sections 208.631 to 208.657, RSMo and shall not be subject to the thirty (30)-day waiting period required under section 208.646, RSMo, as long as the child meets all other qualifications for eligibility.**

*[(11) Parent(s) or guardian(s) of uninsured children with available income above two hundred twenty-five percent (225%) and below three hundred percent (300%) of the federal poverty level are responsible for a co-payment at the time of professional service and for prescriptions.*

*(A) The co-payment is equal to the co-payment required by the Missouri Consolidated Health Care Plan.*

*(B) Co-payment adjustments, based on changes in the Missouri Consolidated Health Care Plan, shall be calculated yearly in March with an effective date of July 1 of the same calendar year.*

*(C) Individuals shall be notified of change(s) in the co-payment amount(s) at least thirty (30) days prior to the effective date.*

*(D) Providers may require payment of the co-payment prior to service delivery and service may be denied for failure to make co-payment. No co-payments shall be required for well-baby and well-child care including age-appropriate immunizations.*

*(12) Parent(s) or guardian(s) of uninsured children with income above one hundred eighty-five percent (185%) and at or below two hundred twenty-five percent (225%) of the federal poverty level for the household size are responsible for a five-dollar (\$5) copayment at the time of professional service. Providers may require payment of the co-payment prior to service delivery and may deny services for failure to make co-payment. No co-payments shall be required for well-baby and well-child care including age-appropriate immunizations.]*

*[(13)] (11)* The total aggregate *[cost-sharing]* premiums for a family covered by this rule shall not exceed five percent (5%) of the family's *[available]* gross income for a twelve (12)-month period of coverage beginning with the first month of service eligibility. *[Families responsible for cost-sharing shall be notified of their maximum liability for the twelve (12)-month period following service eligibility.]* When the total aggregate cost-sharing has reached five percent (5%) of the family's *[available]* gross income all *[co-payments and]* premiums shall be waived for the remainder of the twelve (12)-month period. Waiver *[in cost-sharing]* of premiums shall be made upon notification and documentation *[of co-payments]* from the family that payments for premiums have been

made up to five percent (5%) of their yearly *[available]* gross income.

*[(14)] (12)* Parents of uninsured children must certify that their total net worth does not exceed two hundred fifty thousand dollars (\$250,000) to be eligible for health insurance under this rule.

*[(15)] (13)* For the purposes of this rule, children participating in the Missouri Health Insurance Pool and child/children whose annual maximum benefits on a particular medical service under their private insurance have been exhausted are considered insured. Child/children whose parent(s) or guardian(s) drop Missouri Health Insurance Pool coverage in order to qualify under this rule shall not be eligible for six (6) months from the month coverage was terminated.

*AUTHORITY: sections 208.633, 208.636, 208.640, 208.643, 208.646, 208.650, 208.655, 208.657 and 208.201, RSMo [1994] 2000, and 208.631 and 208.647, RSMo Supp. 2004. Original rule filed July 15, 1998, effective Feb. 28, 1999. Amended: Filed April 29, 2005.*

*PUBLIC COST: This proposed amendment will cost state agencies or political subdivisions one hundred seventy thousand two hundred fifty-three dollars (\$170,253) in the aggregate.*

*PRIVATE COST: This proposed amendment will cost private entities \$23,351,364, the total estimated premium collections for each of the federal poverty levels.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Office of the Director, Division of Medical Services, 615 Howerton Court, Jefferson City, MO 65109. To be considered, comments must be received within thirty (30) days after publication of this notice 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 70-4.080 Children's Health Insurance Program
Type of Rulemaking:	Proposed Amendment

**II. SUMMARY OF FISCAL IMPACT**

Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the count of compliance with the rule by the affected entities:
130	Any child identified as having special health care needs and eligible under the program	Around 50% of the affected children will participate in the program

**III. WORKSHEET**

The cost was determined by utilizing a phase-in formula for the number of eligibles multiplied by the monthly cost per eligible. An estimated 130 children would meet these guidelines in fiscal year 2006 at a monthly cost per child of \$109.56. The estimated annual cost is \$170,253.

**IV. ASSUMPTIONS**

The proposed amendment eliminates the waiting period for health care coverage of any child identified as having special health care needs in the Children's Health Insurance Program pursuant to House Bill 1453 enacted by the 92nd General Assembly, 2004.

This policy was effective July 1, 2004. The state assumes 50% of the identified children will participate in the program based on the state's experience from July 2004 through March 2005.

In order to receive federal financial participation, the Centers for Medicare and Medicaid Services (CMS) would have to approve an amendment to the 1115 Waiver. The state received confirmation of approval in a letter dated June 30, 2004.

## FISCAL NOTE

## PRIVATE COST

## I. RULE NUMBER

Rule Number and Name:	13 CSR 70-4.080 Children's Health Insurance Program
Type of Rulemaking:	Proposed Amendment

## II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the count of compliance with the rule by the affected entities:
29,965	Families/cases that owe a premium	Around 50% of the families/cases will not pay the premium and will not participate in the program

## III. WORKSHEET

PREMIUM CHART FOR 151-185% FPL						
Family Size	Monthly Income	5% Cap	Estimated Monthly Copays	Premium Amount	Estimated Number of Paying Cases	Total Premiums
1	\$1,205	\$60	\$0	\$60	44	\$31,680
2	\$1,616	\$81	\$0	\$81	2,533	\$2,462,076
3	\$2,025	\$101	\$0	\$101	2,877	\$3,486,924
4	\$2,436	\$122	\$0	\$122	2,254	\$3,299,856
5	\$2,846	\$142	\$0	\$142	1,012	\$1,724,448
6	\$3,256	\$163	\$0	\$163	294	\$575,064
7	\$3,666	\$183	\$0	\$183	63	\$138,348
8	\$4,077	\$204	\$0	\$204	11	\$26,928
9	\$4,486	\$224	\$0	\$224	4	\$10,752
10	\$4,897	\$245	\$0	\$245	2	\$5,880
11 and above	\$5,308	\$257	\$0	\$257	1	\$3,084
					9,094	\$11,765,040

PREMIUM CHART FOR 186-225% FPL						
Family Size	Monthly Income	5% Cap	Estimated Monthly Copays	Premium Amount	Estimated Number of Paying Cases	Total Premiums
1	\$1,484	\$74	\$0	\$74	13	\$11,544
2	\$1,990	\$100	\$0	\$100	1,662	\$1,994,400
3	\$2,494	\$125	\$0	\$125	2,011	\$3,016,500
4	\$3,000	\$150	\$0	\$150	1,666	\$2,998,800
5	\$3,506	\$175	\$0	\$175	633	\$1,329,300
6	\$4,010	\$201	\$0	\$201	146	\$352,152
7	\$4,516	\$226	\$0	\$226	38	\$103,056
8	\$5,022	\$251	\$0	\$251	6	\$18,072
9 and above	\$5,526	\$257	\$0	\$257	2	\$6,168
					6,177	\$9,829,992

PREMIUM CHART FOR 226-300% FPL						
Family Size	Monthly Income	5% Cap	Estimated Monthly Copays	Premium Amount	Estimated Number of Paying Cases	Total Premiums
1	\$1,803	\$90	\$0	\$90	0	\$0
2	\$2,418	\$121	\$0	\$121	215	\$312,180
3	\$3,031	\$152	\$0	\$152	338	\$616,512
4	\$3,645	\$182	\$0	\$182	252	\$550,368
5	\$4,260	\$213	\$0	\$213	84	\$214,704
6	\$4,873	\$244	\$0	\$244	18	\$52,704
7 and above	\$5,487	\$274	\$0	\$274	3	\$9,864
					910	\$1,756,332

The premium charts are based on the federal poverty level guidelines effective April 1, 2005 and the number of families/cases as of October 31, 2004.

The private cost of this proposed amendment is \$23,351,364, the total estimated premium collections for each of the federal poverty levels.

#### IV. ASSUMPTIONS

The proposed amendment changes the co-payment and premium requirements of the Children's Health Insurance Program pursuant to Senate Substitute for Senate Bill 539 enacted by the 93<sup>rd</sup> General Assembly, 2005.

The state will impose a premium on children with family incomes above one hundred fifty percent (150%) and below three hundred percent (300%) of the federal poverty level. The aggregate annual cost sharing, with respect to all targeted low-income children in a family, shall not exceed five percent of total family income for a year (or 12 month eligibility period). The maximum monthly premium amount allowed is \$257, which is the statewide weighted average child/children premium required by Missouri Consolidated Health Care Plan. One monthly premium is required per family/case.



The state assumes a reduction of around 50% fewer children being enrolled because of the required premium. This is based on historical experience with the current premium group. However, the state only assumes a 20% reduction in expenditures due to around 50% fewer children.

The premiums collected are utilized for funding the medical services provided to the children enrolled in the Children's Health Insurance Program, therefore reducing the state's obligation for the medical expenditures.

**Title 13—DEPARTMENT OF SOCIAL SERVICES**  
**Division 70—Division of Medical Services**  
**Chapter 4—Conditions of Recipient Participation,**  
**Rights and Responsibilities**

*brought to the Division of Medical Services at 615 Howerton Court, Jefferson City, Missouri. No public hearing is scheduled.*

**PROPOSED RULE**

**13 CSR 70-4.100 Preventing Medicaid Payment of Expenses Used to Meet Spenddown**

*PURPOSE:* This rule establishes the basis on which the Medical Assistance program may reimburse for Title XIX services after spenddown has been met. Spenddown is a process by which aged persons (over sixty-five (65) years), blind persons, or people with disabilities become Medicaid eligible based on their incurred medical expenses when they would not otherwise be eligible.

(1) Aged persons (over sixty-five (65) years), blind persons, or people with disabilities with income above limits established under section 208.151.1(25), RSMo for old age assistance benefits, permanent and total disability benefits, or aid to the blind benefits, as amended, are allowed to deduct from income incurred medical expenses (that is, spenddown) to become eligible.

(2) Spenddown eligibility shall be calculated on a monthly basis.

(3) The Missouri Medical Assistance program (Medicaid) will only reimburse enrolled Medicaid providers for covered medical expenses that exceed a recipient's spenddown amount. Medicaid does not pay the portion of a claim used to meet the applicant's spenddown obligation. For example, for the first day of coverage, the Division of Medical Services denies or splits (partially pays) a claim or claims until the applicant's spenddown liability is reduced to zero (0).

(4) After the Division of Medical Services has reduced the recipient's liability to zero (0) for the first day of coverage, other claims submitted for that day of spenddown coverage and claims for the time remaining in the month are paid up to the Medicaid rate.

(5) Recipients shall have the option to pay their monthly spenddown requirement to the Division of Medical Services, much like a premium payment, in order to have continuous Medicaid coverage. Recipients may also arrange to make the monthly spenddown payment through electronic funds transfer (EFT) from a bank account.

*AUTHORITY:* sections 208.151, RSMo Supp. 2004 and 208.153 and 208.201, RSMo 2000. Emergency rule filed April 25, 2005, effective May 5, 2005, expires Oct. 31, 2005. Original rule filed April 29, 2005.

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

*PRIVATE COST:* This proposed rule will cost private entities approximately \$6,000,000 per month of incurred medical expenses, the total spenddown required in order to be eligible for medical assistance (Medicaid) over the life of the rule.

*NOTICE TO SUBMIT COMMENTS:* Anyone may file a statement in support of or in opposition to this proposed rule with the Office of the Director, Division of Medical Services, 615 Howerton Court, Jefferson City, MO 65109. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. If to be hand-delivered, comments must be

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

Rule Number and Name:	13 CSR 70-4.100 Preventing Medicaid Payment of Expenses Used to Meet Spenddown
Type of Rulemaking:	Proposed Rule

**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 count of compliance with the rule by the affected entities:
Approximately 20,000	Applicants for Medicaid	All

**III. WORKSHEET**

Total accounts receivable transactions	20,306
Total accounts receivable amount	\$6,191,496

**IV. ASSUMPTIONS**

On a monthly basis there will be approximately 20,000 applicants for medical assistance who must spenddown approximately \$6,000,000 in order to be eligible for medical assistance (Medicaid).

**Title 13—DEPARTMENT OF SOCIAL SERVICES  
Division 70—Division of Medical Services  
Chapter 91—Personal Care Program**

**PROPOSED AMENDMENT**

**13 CSR 70-91.010 Personal Care Program.** The division is amending section (4).

*PURPOSE:* This proposed amendment clarifies provisions regarding start and stop times documentation.

(4) Reimbursement.

(A) Payment will be made in accordance with the fee per unit of service as defined and determined by the Division of Medical Services.

1. A unit of service is fifteen (15) minutes.

2. Documentation for services delivered by the provider must include the following:

A. The recipient's name and Medicaid number;

B. The date of service;

C. The time spent providing the service which must be documented in one (1) of the following manners:

(I) When a personal care aide is providing services to one (1) individual in a private home setting and devotes undivided attention to the care required by that individual, the actual clock time the aide began the services for that visit *[is]* shall be documented as the start time, and the actual clock time the aide finished the care for the visit *[is]* shall be documented as the stop time; and

(II) When the personal care services are provided in a congregate living setting, such as a Residential Care Facility I and II, when on-site supervision is available and personal care aide staff will divide their time among a number of individuals, the following must be documented: all tasks performed for each recipient by date of services and by staff shifts during each twenty-four (24)-hour period;

D. A description of the service;

E. The name of the personal care aide who provided the service; and

F. For each date of service: the signature of the recipient, or the mark of the recipient witnessed by at least one (1) person, or the signature of another responsible person present in the recipient's home or licensed Residential Care Facility I or II at the time of service. "Responsible person" may include the personal care aide's supervisor, if the supervisor is present in the home at the time of service delivery. The personal care aide may only sign on behalf of the recipient when the recipient is unable to sign and there is no other responsible person present.

3. A provider may not bill time spent in the delivery of service of less than one (1) unit of service for any recipient. However, time spent in the delivery of service of less than one (1) full unit for any recipient may be accrued by the provider to establish a unit of service. In no event may time spent in the delivery of service be accrued beyond the last day of the calendar month in which such services were rendered.

4. The fee per unit of service will be based on the determination by the state agency of the reasonable cost of providing the covered services on a statewide basis and within the mandatory maximum payment limitations.

*AUTHORITY:* sections 208.152, RSMo Supp. 2004 and 208.153 and 208.201, RSMo 2000. This rule was previously filed as 13 CSR 40-81.125. Original rule filed April 14, 1982, effective July 11, 1982. For intervening history, please consult the Code of State Regulations. Amended: Filed April 29, 2005.

*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 Office of the Director, Division of Medical Services, 615 Howerton Court, Jefferson City, MO 65109. To be considered, comments must be received within thirty (30) days after publication of this notice 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.

**Title 16—RETIREMENT SYSTEMS  
Division 50—The County Employees' Retirement Fund  
Chapter 10—County Employees' Defined Contribution Plan**

**PROPOSED AMENDMENT**

**16 CSR 50-10.050 Distribution of Accounts.** The board is amending section (5).

*PURPOSE:* This amendment clarifies the defined contribution plan's compliance with Code Section 401(a)(9).

(5) Compliance with Code Section 401(a)(9). [Regardless of any contrary provision in the Plan, any distribution shall be determined in accordance with Code section 401(a)(9) and, with respect to distributions under the Plan made in calendar years beginning on or after January 1, 2002, the regulations thereunder that were proposed in January 2001. Accordingly, distribution of a Participant's Account shall be made no later than the April 1 of the calendar year following the later of—

(A) The calendar year in which the Participant attains age 70 1/2; or

(B) The calendar year in which the Participant retires.]

Notwithstanding anything to the contrary contained in the Plan, the entire interest of a Participant will be distributed in accordance with Code section 401(a)(9) and the regulations thereunder beginning no later than the Participant's required beginning date. The provisions of this section will apply for purposes of determining required minimum distributions for calendar years beginning with the 2003 calendar year. Notwithstanding the other provisions of this section, distributions may be made under a designation made before January 1, 1984, in accordance with section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and the provisions of the Plan that relate to section 242(b)(2) of TEFRA.

(A) If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:

1. If the Participant's surviving spouse is the Participant's sole designated beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age seventy and one-half (70 1/2), if later.

2. If the Participant's surviving spouse is not the Participant's sole designated beneficiary, then distributions to the designated beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.

3. If there is no designated beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of

the calendar year containing the fifth anniversary of the Participant's death.

4. If the Participant's surviving spouse is the Participant's sole designated beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this subsection, other than paragraph (A)1., will apply as if the surviving spouse were the Participant.

5. For purposes of this subsection, unless paragraph (A)4. applies, distributions are considered to begin on the Participant's required beginning date. If paragraph (A)4. applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under paragraph (A)1. To the extent the Plan provides for distributions in the form of annuities, if distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's required beginning date (or to the Participant's surviving spouse before the date distributions are required to begin to the surviving spouse under paragraph (A)1., the date distributions are considered to begin is the date distributions actually commence.

(B) Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with subsections (C) and (D). To the extent the Plan provides for distributions in the form of annuities, if the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Code section 401(a)(9) and the Treasury regulations.

(C) During the Participant's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:

1. The quotient obtained by dividing the Participant's account balance by the distribution period in the Uniform Lifetime Table set forth in section 1.401(a)(9)-9 of the Treasury regulations, using the Participant's age as of the Participant's birthday in the distribution calendar year; or

2. If the Participant's sole designated beneficiary for the distribution calendar year is the Participant's spouse, the quotient obtained by dividing the Participant's account balance by the number in the Joint and Last Survivor Table set forth in section 1.401(a)(9)-9 of the Treasury regulations, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the distribution calendar year.

3. Required minimum distributions will be determined beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the Participant's date of death.

(D) If the Participant dies on or after the date distributions begin and there is a designated beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's designated Beneficiary, determined as follows:

1. The Participant's remaining life expectancy is calculated using the age of the Participant in the year of death, reduced by one (1) for each subsequent year.

2. If the Participant's surviving spouse is the Participant's sole designated beneficiary, the remaining life expectancy of the surviving spouse is calculated for each distribution calendar year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For distribution calendar years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's

birthday in the calendar year of the spouse's death, reduced by one (1) for each subsequent calendar year.

3. If the Participant's surviving spouse is not the Participant's sole designated beneficiary, the designated beneficiary's remaining life expectancy is calculated using the age of the beneficiary in the year following the year of the Participant's death, reduced by one (1) for each subsequent year.

4. If the Participant dies on or after the date distributions begin and there is no designated beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the Participant's remaining life expectancy calculated using the age of the Participant in the year of death, reduced by one (1) for each subsequent year.

(E) If the Participant dies before the date distributions begin and there is a designated beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the remaining life expectancy of the Participant's designated beneficiary, determined as provided in subsection (D). If the Participant dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death. If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole designated beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under paragraph (A)1., this section will apply as if the surviving spouse were the Participant.

(F) The following definitions shall apply for purposes of this section:

1. Designated beneficiary shall mean the individual who is designated as the beneficiary under the terms of the Plan and is the designated beneficiary under Code section 401(a)(9) and section 1.401(a)(9)-1, Q&A-4 of the Treasury regulations.

2. A distribution calendar year is a calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant's required beginning date. For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin under subsection (A). The required minimum distribution for the Participant's first distribution calendar year will be made on or before the Participant's required beginning date. The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the Participant's required beginning date occurs, will be made on or before December 31 of that distribution calendar year.

3. Life expectancy means an individual's life expectancy as computed by use of the Single Life Table in section 1.401(a)(9)-9 of the Treasury regulations.

4. The Participant's account balance is the account balance as of the last valuation date in the calendar year immediately preceding the distribution calendar year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the account balance as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date. The account balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the distribu-

tion calendar year if distributed or transferred in the valuation calendar year.

5. The Participant's required beginning date is the April 1 of the calendar year following the later of (a) the calendar year in which the Participant attains age seventy and one-half (70 1/2), or (b) the calendar year in which the Participant retires.

*AUTHORITY:* sections 50.1250, RSMo Supp. 2004 and 50.1260, RSMo 2000. Original rule filed May 9, 2000, effective Jan. 30, 2001. Amended: Filed April 25, 2002, effective Nov. 30, 2002. Amended: Filed Aug. 24, 2004, effective March 30, 2005. Amended: Filed April 27, 2005.

*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 County Employees' Retirement Fund, PO Box 2271, 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 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES**  
**Division 20—Division of Environmental Health and Communicable Disease Prevention**  
**Chapter 3—General Sanitation**

**PROPOSED RESCISSION**

**19 CSR 20-3.050 Sanitation and Safety Standards for Lodging Establishments.** This rule established sanitation and safety standards for lodging establishments.

*PURPOSE:* This rule is being rescinded because a new rule, 19 CSR 20-3.050, has been developed to establish sanitation and safety standards pertaining to life safety, fire safety, electrical wiring, fuel-burning appliances, plumbing, and swimming pools/spas.

*AUTHORITY:* sections 192.006 and 315.005–315.065, RSMo 2000. This rule was previously filed as 13 CSR 50-66.010. Original rule filed as Missouri Division of Health E 9.01 on Sept. 4, 1957, effective Sept. 14, 1957. Rescinded and readopted: June 28, 2001, effective Feb. 28, 2002. Rescinded: Filed April 15, 2005.

*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 Bryant McNally, Division Director, Missouri Department of Health and Senior Services; Division of Environmental Health and Communicable Disease Prevention; PO Box 570, Jefferson City, MO 65102-0570. 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 20—Division of Environmental Health and Communicable Disease Prevention**  
**Chapter 3—General Sanitation**

**PROPOSED RULE**

**19 CSR 20-3.050 Sanitation and Safety Standards for Lodging Establishments**

*PURPOSE:* This rule establishes sanitation and safety standards pertaining to life safety, fire safety, electrical wiring, fuel-burning appliances, plumbing and swimming pools/spas for lodging establishments.

*PUBLISHER'S NOTE:* The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(1) General.

(A) Definitions.

1. "Administrative authority" shall mean local or state health department representative or local codes administrator/fire marshal, state fire marshal or his/her representative.

2. "Air break" shall mean a piping arrangement in which a drain from a fixture, appliance or device discharges indirectly into another fixture, receptacle or interception at a point below the flood level rim. The connection does not provide an unobstructed vertical distance and is not solidly connected but precludes the possibility of backflow to a potable water source.

3. "Air gap" shall mean the unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or outlet supplying fixture, or other device, and the flood-level rim of the receptacle. The vertical physical separation shall be at least two (2) times the inside diameter of the water inlet pipe above the flood rim level but shall not be less than one inch (1").

4. "Approved" shall mean acceptable to the administrative authority having jurisdiction.

5. "Bed and breakfast" shall mean an existing building(s) with no more than three (3) occupiable stories, with at least five (5) but no more than ten (10) guest rooms. The building shall have interior corridors and be provided with a kitchen; breakfast shall be provided to guests and the owner must live in or adjacent to the building.

6. "Dead-end corridor" shall mean a corridor, aisle or passage-way arranged without an exit access in two (2) directions.

7. "Equivalent code" shall mean any code that is accepted by state regulatory authorities and the industry that contains the same definition or standard as the code referenced in this rule, including but not limited to, fire alarm systems, wireless smoke detectors and supervised sprinkler systems.

8. "Existing lodging establishment" shall mean a building, component or feature that is operating as a licensed lodging establishment or was in the process of obtaining a lodging license as of the effective date of this rule.

9. "Exit" shall mean the portion of a means of egress that is separated from all other spaces of the building or structure by construction or equipment required to provide a protected way of travel to the exit discharge. Exits include exterior exit doors, exit passage-ways, horizontal exits, separated exit stairs and separated exit ramps.

10. "Exit access" shall mean the portion of a means of egress that leads to an exit.

11. "Exit discharge" shall mean the portion of a means of egress between the termination of an exit and a public way.

12. "Fire alarm system" is as described in the National Fire Protection Association 72, *National Fire Alarm Code 2002 Edition*, which is incorporated by reference in this rule or equivalent code. Any interested person may view this material at the agency's headquarters or may purchase a copy from the National Fire Protection Association, 11 Tracy Drive, Avon, MA 02322. This rule does not incorporate any subsequent amendments or additions.

13. "Fire barrier" shall mean a structural element, either vertical or horizontal, such as a wall or floor assembly, that is designed and constructed with a specified fire resistance rating to limit the spread of fire and restrict the movement of smoke. Such barriers may have protected openings.

14. "Fire resistance rating" shall mean the length of time, in minutes or hours, that materials or structural elements can withstand fire exposure.

15. "Flame resistant material" shall mean the property of material or its structural elements that prevents or retards the passage of excessive heat, hot gases or flames under conditions in which they are used.

16. "Furnace" shall mean a heating device with forced air ductwork.

17. "Group of buildings" as referenced in the lodging establishment definition, shall mean any building, structure, facility, place, bed and breakfast, or places of business, including but not limited to, multiple, individual or multi-unit cabins and guest rooms that are not attached to the main building but receive the same services/amenities as those guest rooms within the main building.

18. "Guest room" shall mean any room or unit where sleeping accommodations are regularly furnished to the public.

19. "Hardwired" shall mean wired directly and permanently into the building's main electrical wiring system and/or a wireless system as described in the National Fire Protection Association 72, *National Fire Alarm Code 2002 Edition* or equivalent code.

20. "Hazardous areas" shall mean areas of structures or buildings posing a degree of hazard greater than normal to the general occupancy of a building or structure, such as areas used for the storage or use of combustibles or flammable, toxic, noxious or corrosive materials, or heat-producing appliances.

21. "Historic building" shall mean a building that is listed individually in the National Register of Historic Places or is located in a registered historic district and certified by the Secretary of the Interior as contributing to the historic significance of the district.

22. "Lodging establishment" shall include any building, group of buildings, structure, facility, place, or places of business where five (5) or more guest rooms are provided, which is owned, maintained, or operated by any person and which is kept, used, maintained, advertised or held out to the public for hire which can be construed to be a hotel, motel, motor hotel, apartment hotel, tourist court, resort, cabins, tourist home, bunkhouse, dormitory, or other similar place by whatever name called, and includes all such accommodations operated for hire as lodging establishments for either transient guests, permanent guests, or for both transient and permanent guests. This definition shall not apply to dormitories and other living or sleeping facilities owned or maintained by public or private schools, colleges, universities, or churches unless made available to the general public and not used exclusively for students and faculty, school-sponsored events, baseball camps, conferences, dance camps, equitation camps, football camps, learned professional society meetings, music camps, retreats, seminars, soccer camps, swimming camps, track camps, youth leadership conferences, or church-sponsored events.

23. "Major renovation" shall mean a physical change to a lodging establishment or portion thereof, including the replacement or upgrading of major systems, which extends the useful life. Examples include, but are not limited to, demolition of the interior or exterior of a building or portion thereof, including the removal and subse-

quent replacement of electrical, plumbing, heating, ventilating and air conditioning systems, fixed equipment and interior walls and partitions (whether fixed or moveable). Replacement of broken, dated or worn equipment/items, including but not limited to, individual air conditioning units, bathroom tile, shower stalls that do not require any additional or new plumbing, electrical, etc. shall not be considered a major renovation.

24. "Means of egress" shall mean a continuous and unobstructed way of travel from any point in a building or structure to a public way. A means of egress consists of three (3) distinct parts, the exit access, the exit and the exit discharge.

25. "New lodging establishment" shall mean a building, component or feature that has a current inspection conducted by or for the Missouri Department of Health and Senior Services (DHSS) and begins operation as a lodging establishment after February 2002 or an existing lodging establishment that has ceased operation for a time period of eighteen (18) months or more and reopens as a lodging establishment after February 2002.

26. "Occupiable story" shall mean a story available to guests.

27. "Potable water" shall mean water which is safe for human consumption in that it is free from impurities in amounts sufficient to cause disease or harmful physiological effects and, for the purpose of this rule, must be approved by the Department of Natural Resources (DNR) or the DHSS prior to serving to the general public.

28. "Potentially hazardous food" shall mean those foods that are referenced in 19 CSR 20-1.025 Sanitation of Food Establishments.

29. "Prepackaged" shall mean bottled, canned, cartoned, securely bagged or securely wrapped, whether packaged in a food establishment or a food processing plant. It does not include a wrapper, carryout box or other nondurable container used to containerize food with the purpose of facilitating food protection during service and receipt of the food by the consumer.

30. "Primary means of egress" shall consist of, but is not limited to, an enclosed interior stair, an exterior stair, horizontal exit, door, stairway, or ramp providing a means of unobstructed travel without traversing any corridor or space exposed to an unprotected vertical opening. The primary means of escape shall lead outside of the dwelling unit at street or ground level. Stairways serving as part of the primary means of egress shall be enclosed with fire barriers (vertical), such as wall or partition assemblies with a fire resistance rating of not less than thirty (30) minutes. Such enclosures shall be continuous from floor to floor. Openings shall be protected as appropriate for the fire resistance rating of the barrier.

31. "Private water supply" shall mean a piped water supply having less than fifteen (15) service connections or serving less than twenty-five (25) people at least sixty (60) days out of the year.

32. "Public water supply" shall mean a piped water supply having fifteen (15) or more service connections or serving twenty-five (25) or more people at least sixty (60) days out of the year. It may be a community water system, transient noncommunity water system or nontransient noncommunity water system.

33. "Public way" shall mean an area such as a street or sidewalk that is open to the outside and is used by the public for moving from one (1) location to another.

34. "Remote exit or means of egress" shall mean when two (2) exits or two (2) exit access doors are required.

35. "Secondary means of egress" shall consist of, but is not limited to, a door, outside window, stairway, passage, fire escape or hall providing a way of unobstructed travel to the outside of the dwelling at street or ground level; a passage through an adjacent non-lockable space to any approved means of escape; an outside window or door operable from the inside without the use of tools, keys, or special effort and providing a clear opening of not less than twenty inches (20") in width, twenty-four inches (24") in height, and 5.7 square feet in area. The bottom of the opening shall not be more than forty-four inches (44") above the floor. Such means of escape shall be acceptable if the window is within twenty feet (20') of grade or

opens onto an exterior balcony and is directly accessible to fire department rescue apparatus as approved by the local fire inspector or State Fire Marshal's office.

36. "Self-closing" shall mean to be equipped with an approved device that will ensure closing after having been opened.

37. "Sleeping room" shall mean the part of the guest room where people sleep.

38. "Smoke proof enclosure" shall mean a stair enclosure designed to limit the movement of combustion products, produced by a fire occurring in any part of the building, into such enclosure.

39. "Spa" shall mean a pool designed for recreational and/or therapeutic use and not drained, cleaned and refilled for each individual. It may include, but is not limited to, hydrojet circulation, hot water, cold water, mineral baths, air induction systems or any combination thereof.

40. "Story" shall mean the portion of a building located between the upper surface of a floor and the upper surface of the floor or roof next above.

41. "Supervised sprinkler system" is as described in the National Fire Protection Association 13, *Standard for the Installation of Sprinkler Systems 2002 Edition* and the National Fire Protection Association 13R, *Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height 2002 Edition*, which are incorporated by reference in this rule or equivalent code. Any interested person may view this material at the agency's headquarters or may purchase a copy from the National Fire Protection Association, 11 Tracy Drive, Avon, MA 02322. This rule does not incorporate any subsequent amendments or additions.

42. "Wet location" shall mean a location subject to saturation with water or other liquids, including but not limited to, bathtubs, sinks and/or shower stalls.

(2) Requirements for Obtaining a Lodging License (Existing, New and Renovated). Lodging establishments shall be responsible for providing any and all documentation related to inspections and evaluations required in this rule, including but not limited to, fire extinguishers, fire alarm systems, sprinkler systems and smoke detectors.

(A) Existing lodging establishments shall:

1. Comply with Missouri laws and the DHSS rules and regulations regarding lodging establishments;

2. Comply with Missouri laws and the DNR rules and regulations regarding, but not limited to, sewage treatment, drinking water and backflow;

3. Comply with Missouri laws and the Department of Public Safety (DPS) rules and regulations regarding pressure vessels;

4. Be operated and maintained in compliance with any and all applicable ordinances and regulations; and

5. If listed as a historical building, the owner must notify the DHSS. Upon notification, the DHSS will collaborate with the DNR, State Historical Preservation Office, to determine requirements for licensing.

(B) New lodging establishments shall:

1. Comply with Missouri laws and the DHSS rules and regulations regarding lodging establishments;

2. Comply with Missouri laws and the DNR rules and regulations regarding, but not limited to, sewage treatment, drinking water and backflow;

3. Comply with Missouri laws and the DPS rules and regulations regarding pressure vessels;

4. If built within a jurisdiction with applicable local ordinance(s), be erected, operated and maintained in compliance with those ordinances and regulations, or if not built within a jurisdiction with applicable local ordinance(s), be erected, operated and maintained in accordance with the 2002 Edition of a national code(s) regarding life safety, structural, electrical, plumbing, mechanical and architectural elements of the establishment, unless otherwise specifically stated in this rule;

5. If listed as a historical building, the owner must notify the DHSS. Upon notification, the DHSS will collaborate with the DNR, State Historical Preservation Office, to determine requirements for licensing; and

6. Present an occupancy permit issued by the regulating authority, or if not located within a jurisdiction that issues occupancy permits, certify to the DHSS that the establishment has been designed and erected in accordance with the 2002 Edition of a national code(s) regarding life safety, structural, electrical, plumbing, mechanical and architectural elements of the establishment. Certification to these facts will be accepted by a professional engineer, architect or the general contractor responsible for the construction of the establishment being licensed.

(C) Lodging establishments undergoing a major renovation shall:

1. Present an occupancy permit issued by the regulating authority, or if not located within a jurisdiction that issues occupancy permits, certify to the DHSS that the addition has been designed and erected in accordance with the 2002 Edition of a national code(s) regarding life safety, structural, electrical, plumbing, mechanical and architectural elements of the establishment. Certification to these facts will be accepted by a professional engineer, architect or the general contractor responsible for the construction of the establishment being licensed.

(3) Requirements for Operating a Lodging Establishment.

(A) Drinking Water Supply. Water supplies that serve lodging establishments shall provide safe drinking water. Bacteriological, chemical and radiological contaminants shall be within levels acceptable to the administrative authority. Supplies deemed unsafe by the DHSS or DNR shall not be used as a potable water supply.

1. Treatment equipment for community, noncommunity public and private water supplies.

A. New or existing treatment equipment necessary to provide a safe drinking water supply shall be installed, maintained and operated according to manufacturer's specifications and the DHSS requirements as defined in (3)(A)1.-7. or the DNR requirements.

B. Existing chlorinators and chlorinators required to be installed to provide safe drinking water, after the effective date of this rule, shall be a positive feed liquid chlorinator with thirty (30)-minute retention time based on pump capacity and must maintain a residual no less than 0.5 and no greater than four (4) parts per million (ppm) free available chlorine.

C. Equipment, approved by the administrative authority, shall be available to test the treatment system.

2. Community and noncommunity public water supplies:

A. Shall be in compliance with Missouri laws and the DNR rules and regulations;

B. Noncommunity water supplies shall have a valid DNR permit to dispense water. A current copy of the DNR permit to dispense water must be available for review by the administrative authority.

3. Private water supplies:

A. Shall be regulated under the jurisdiction of the DHSS and constructed and located according to 10 CSR 23-3.010-10 CSR 23-3.110 Missouri Well Construction Code with the following above-ground construction components verified by inspection:

(I) Well casing shall extend a minimum of twelve inches (12") above grade; and

(II) The top of the well casing shall be free of openings that may allow the entry of contaminants;

B. Potentially influenced by surface water or shallow groundwater (i.e. springs, bored and dug wells) shall be equipped with a treatment system that includes:

(I) Microfiltration using a filter with a one (1) micron absolute or smaller pore size; and

(II) A chlorinator as defined in (3)(A)1.B.

4. Routine testing for transient noncommunity public and private water supplies.



A. Transient noncommunity public water and private water supplies shall be in compliance with all applicable testing mandated by the DHSS or DNR.

(I) During each inspection, but no less than annually, a bacteriological water sample shall be collected by the administrative authority and analyzed for the presence of coliform bacteria; and

(II) A nitrate sample shall be collected when deemed necessary by the administrative authority and at least annually when a chlorinator is present. Wells exceeding nitrate levels of ten (10) ppm shall not be used for drinking water; a permanent alternative water supply must be provided.

B. Water supplies with chlorinators installed, after the effective date of this rule, shall:

(I) Have a nitrate analysis conducted prior to installing a chlorinator;

(II) Provide two (2) consecutive bacteriological sampling results, collected by the administrative authority a minimum of five (5) days apart, that are absent for total coliform and/or *E. coli*; and

(III) Provide monthly bacteriological sampling results for twelve (12) months.

(a) If results are satisfactory for twelve (12) consecutive months, the administrative authority shall determine future sampling frequencies.

(b) If bacteriological sampling results continue to indicate the presence of total coliform, the well may be deemed unsafe by the DHSS.

(c) If two (2) water samples collected by the administrative authority within a twelve (12)-month period separated by at least thirty (30) days are *E. coli* positive, the well shall be deemed unsafe by the DHSS, unless immediate corrective actions can be taken to provide safe drinking water. These corrective actions must be approved by the DHSS.

C. Private water supplies not meeting satisfactory bacteriological water results shall be placed under a Boil Water Order or Boil Water Notice/Advisory. Private water supplies not meeting satisfactory chemical or radiological water results shall be placed under a Limit Use Order.

5. During a Boil Water Order (including precautionary Boil Water Notice/Advisories) or a Limit Use Order issued on a public and/or private water supply, the operator shall comply with the following intermediate process(es) until permanent corrections have been made to the water supply:

A. Notify guests, verbally and again by written notice prominently placed in each rented guest room, that the plumbed water is not potable and only potable water should be used for drinking and/or brushing of teeth. Additional restrictions for water use may be required by the DHSS;

B. Discard ice that may have been made from or exposed to contaminated water; and

C. Obtain a temporary, alternate supply of potable water using one of the following practices:

(I) Individual containers of commercially bottled water shall be placed in each rented guest room and additional bottled water shall be available upon request by guests;

(II) Bulk water containers acceptable to the DHSS and which are filled from a source acceptable to the DHSS or DNR may be used. Such water shall be treated with an appropriate concentration of residual disinfectant to effectively counteract potential contamination that may be introduced between the filling of the container(s) and the dispensing of the water. This water shall be transported and handled in a safe and sanitary manner, which prevents contamination; or

(III) Other methods approved by the DHSS or DNR.

D. Community and noncommunity public water supplies shall comply with all mandated requirements issued by the DNR, local water district or utilities.

6. For a Boil Water Order to be lifted on private water supplies, the operator shall comply with one (1) of the following permanent corrections:

A. Provide a chlorinator and comply with (3)(A)1.B. and (3)(A)4.B.(II);

B. Provide an alternate connection to an adjacent plumbing source of water acceptable to the DHSS and/or DNR, which is protected from contamination and capable of supplying a sufficient quantity of water; or

C. Other permanent disinfection process(es) or permanent corrective measure(s) as authorized by the DHSS.

7. For a Limit Use Order to be lifted for public and/or private water supplies, the operator shall comply with one (1) of the following permanent corrections:

A. Provide an alternate connection to an adjacent plumbing source of water acceptable to the DHSS and/or DNR, which is protected from contamination and capable of supplying a sufficient quantity of water; or

B. Other permanent corrective measures that provide a safe water supply, as approved by the DHSS.

(B) Wastewater Handling. Sewage and Wastewater Treatment and Disposal Systems.

1. On-site sewage treatment and disposal systems which generate three thousand (3,000) gallons or less of wastewater per day and are maintained in a subsurface treatment and disposal system shall be regulated by the DHSS.

A. Any on-site wastewater treatment system installed after January 1, 1996 shall be constructed according to 19 CSR 20-3.060 Minimum Construction Standards for On-Site Sewage Disposal Systems or applicable local ordinance.

B. On-site wastewater treatment systems shall be operated and maintained to preclude surfacing or discharging effluent, production of odors or the creation of a habitat for insect breeding, contamination of surface water or groundwater or creation of a nuisance or health hazard.

C. Malfunctioning systems shall be renovated according to 19 CSR 20-3.060 Minimum Construction Standards for On-Site Sewage Disposal Systems or applicable local ordinance.

2. Wastewater treatment and disposal systems which generate more than three thousand (3,000) gallons of wastewater per day or are connected into waste stabilization ponds, or other alternative systems which discharge shall be regulated by the DNR.

A. Any wastewater treatment system installed after February 2002 shall have a National Pollutant Discharge Elimination System (NPDES) Permit, a General Permit or Exemption Letter issued by the DNR.

B. Wastewater treatment systems shall be operated and maintained to preclude the production of odors or creation of a habitat for insect breeding, growth of tall weeds or trees on or in a lagoon or its berm, or creation of a nuisance or health hazard.

(C) Sanitation/Housekeeping. Lodging establishments shall be kept in a clean and sanitary condition, in good repair, and shall be maintained and operated with strict regard to the health and safety of the patrons. The following items shall be held in compliance:

1. Walls, floors and ceilings of guest rooms shall be kept clean and in good repair. Furnishings, including draperies, beds, appliances, furniture and lamps, shall be kept clean and in good repair;

2. Clean and proper housekeeping shall be employed in guest rooms and related facilities;

A. A room in use shall be cleaned at least each time a different guest rents the room. If the same guest continuously occupies a room, the room shall be cleaned at least weekly.

B. Clean towels and washcloths shall be provided in the guest room each day that guest room is occupied by a different guest.

C. Clean bed linens shall be provided in the guest room each day that guest room is occupied by a different guest. If the same guest continuously occupies a room, bed linens shall be changed at

least weekly. Bedspreads shall be clean and maintained in good repair.

D. Mattresses and boxsprings shall be clean and in good repair. The sleeping surfaces of a mattress in use shall be completely covered by a sheet. Excessively damaged or soiled mattresses and/or boxsprings shall be replaced.

E. Single-service drinking glasses and/or utensils, if provided in guest rooms, shall be prepackaged.

F. Insects, rodents, and other pests shall be controlled to minimize their presence on the premises by routinely inspecting the premises for evidence of pests, eliminating harborage conditions and using methods, if pests are found, such as trapping devices or other means of pest control. If rodenticides and/or pesticides are used and/or stored on the premises, they shall be stored away from areas containing food and not accessible to guests.

G. Ice provided for guests and patrons' use shall be from a commercial source or made from a potable water supply approved by the DHSS or DNR. The ice shall be protected from contamination, which shall include the following:

(I) Ice machines, dispensers or chests shall be sheltered from the weather, kept in good repair and the ice compartment shall be kept clean and free of mold, rust, debris, foreign objects or other contaminants. Existing establishments operating before February 2002 may continue to use existing chest type ice machines and dispensers. All establishments that replace or add a new self-service ice machine for guest use shall only provide dispensing type self-service ice machines;

(II) Ice machines and ice trays within guest refrigerators shall be kept clean and sanitary. Ice shall be removed from the ice bin and ice trays each time a different guest rents the room;

(III) An approved scoop with a handle that is seamless and without cracks shall be provided for each bin-type ice machine or chest. The scoop may be stored in a holster in the ice compartment, in a smooth non-absorbent holder outside the ice machine or chest, or in another manner acceptable to the administrative authority; and

(IV) Individual ice buckets or containers, if provided, shall be kept clean, in good repair, and constructed of a smooth, non-absorbent, food-grade material.

(a) If a food-grade single service liner is provided, the individual ice buckets/containers shall be washed, rinsed and sanitized as needed. Reuse of the food-grade single service liner is forbidden.

(b) If a food-grade single service liner is not provided, the individual ice buckets/containers shall be washed, rinsed and sanitized at least each time a different guest rents the room.

H. Ice buckets/containers and reusable glasses and utensils, if provided, shall not be located within the room housing the toilet unless approved by the administrative authority.

I. Ice buckets/containers, reusable glasses and utensils, if provided, shall be washed, rinsed and sanitized using one (1) of the following practices. Exception: Guest rooms provided with kitchenettes—

(I) A sink with at least three (3) compartments shall be provided for manually washing, rinsing, and sanitizing the reusable items. Sink compartments shall be large enough to accommodate immersion of the largest piece of equipment and utensil;

(II) A mechanical dishwasher that meets the requirements for washing, rinsing and sanitizing as outlined in 19 CSR 20-1.025 Sanitation of Food Establishments; or

(III) Other methods approved by the administrative authority.

J. The guest rooms, buildings and premises shall be kept neat and free of refuse and debris.

(I) Garbage and refuse shall be stored in a covered durable, leak-proof and vermin-proof non-absorbent container. If there is evidence of vermin or a creation of a nuisance or health hazard, outdoor trash containers shall be stored on a smooth, hard surface such as

concrete or machine-laid asphalt that is sloped to drain, or other methods approved by the administrative authority.

(II) Garbage and refuse shall be disposed of on a routine basis.

(III) Plant growth or other items in close proximity to the lodging establishment and its attendant facilities shall be maintained so as not to create a nuisance through harborage (cover) for pests such as rodents, vermin, reptiles and other small animals.

(IV) Items creating harborage for insects or vermin, or creating a health or safety hazard, shall be removed;

3. Lodging establishments that store, prepare, package, serve, vend or otherwise provide food(s), other than prepackaged non-potentially hazardous food, for human consumption directly or indirectly to a consumer, where consumption is on or off the premises and regardless of whether there is a charge for the food, shall be considered a food establishment and shall be regulated according to 19 CSR 20-1.025 Sanitation of Food Establishments or applicable local ordinance;

4. Lodging establishments that offer only commercially prepared, individually-portioned prepackaged foods that are nonpotentially hazardous and/or whole-uncut fresh fruits and vegetables and/or only prepare coffee for guest use shall not be considered a food establishment, and shall comply with the following requirements:

A. Food shall be of sound condition, free from spoilage, filth or other contamination and shall be safe for human consumption;

B. Condiments served shall be provided in individual packages;

C. Single service articles shall be stored, handled and dispensed in a manner that prevents contamination of surfaces, which may come into contact with food or with the mouth of the user;

D. Food serving areas and food contact surfaces shall be smooth, free of breaks, open seams, cracks, chips and similar imperfections;

E. Food shall be stored and presented in such a way as to be protected from cross-contamination; and

F. Employees shall observe good hygienic practices during all working periods of food service. Employees shall wash their hands prior to beginning work, during work, and as often as necessary to keep them clean, and after using the toilet, smoking, eating and drinking; and

5. Coffeemakers and coffee pots used by the lodging establishment for preparing coffee to the guests or provided in guest rooms, shall not be located within the room housing the toilet unless approved by the administrative authority and shall be washed, rinsed and sanitized using one(1) of the following methods and/or equipment:

A. A sink with at least three (3) compartments shall be provided for manually washing, rinsing, and sanitizing the coffeemakers and coffee pots. Sink compartments shall be large enough to accommodate immersion of the largest piece of equipment and utensil;

B. A mechanical dishwasher that meets the requirements for washing, rinsing and sanitizing as outlined in 19 CSR 20-1.025 Sanitation of Food Establishments;

C. A clean-in-place method shall be designed so that cleaning and sanitizing solutions circulate throughout the fixed system and contact all interior food contact surfaces; the system shall be self-draining or capable of being completely drained of cleaning and sanitizing solutions, and the cleaning and sanitizing solutions used are intended for food contact surfaces; or

D. Other methods approved by the administrative authority.

(D) Life Safety. The lodging establishment shall be constructed, operated and maintained with strict regard to health and safety.

1. Operation and maintenance requirements are as follows:

A. Combustibles, whether solid, liquid or gaseous, shall be properly used and stored so that they do not present a hazard to health or life safety;

B. Toxic, corrosive, oxidizing or other hazardous materials shall be properly used, stored, and disposed of in such a manner that they do not present a hazard to health or life safety;

C. All guards placed on the sides of open face stairs shall be attached to the stair in a sturdy manner and maintained in good repair. All railings for balconies shall be attached to the balcony in a sturdy manner and maintained in good repair;

D. There shall be no storage on stairs or landings;

E. Stairways, walks, ramps and porches shall be kept free of ice and snow;

F. If the administrative authority suspects that defects are present with regard to the integrity of the structure or electrical system of the lodging establishment, that authority may require the owner to retain the services of a professional engineer to certify the lodging establishment for building safety;

G. Buildings must be adequately maintained to assure safe and sanitary conditions;

H. All repairs, additions and maintenance must be conducted in a manner that produces safe and sanitary conditions; and

I. Facilities using fuel-fired equipment or appliances that pose a potential carbon monoxide risk, including facilities with attached parking garages or wood burning fireplaces, shall install a carbon monoxide detector(s). Carbon monoxide detectors shall be installed according to manufacturer's specifications and should not be placed within five feet (5') of gas-fueled appliances or near cooking or bathing areas. Exception: carbon monoxide detectors installed prior to the effective date of this rule.

(I) Carbon monoxide detectors shall not be required to be installed in the attached parking garage area.

(II) Carbon monoxide detectors shall be required in rooms adjoining or sharing a common ventilation system with the attached parking garage.

(III) Carbon monoxide detectors shall be in good working condition. If the battery-operated detector is routinely not operational, the owner shall install a detector that is hardwired with battery backup.

(IV) By June 2007, all carbon monoxide detectors shall be hardwired with battery backup.

(V) Carbon monoxide detectors shall be tested at least monthly or as needed to ensure they are operating properly and batteries shall be changed as needed.

2. Electrical. Installation and maintenance of electrical components shall be in compliance with local codes when applicable. In the absence of local codes, the following requirements shall be met:

A. New lodging establishments having electrical outlets installed within five feet (5') of wet locations or outdoors are required to be fitted with ground-fault circuit interrupters. Existing lodging establishments undergoing a major renovation or rewiring shall be required to install ground-fault circuit interrupters in electrical outlets located within five feet (5') of wet locations or outdoors;

B. Electrical switches, outlets and junction boxes must be covered and properly protected from physical damage at all times;

C. All appliances must be grounded to design specifications;

D. Wire splices shall be located in covered junction boxes at all times;

E. Bare or frayed wiring is prohibited;

F. Three (3)-prong receptacles must be properly grounded at all times. Nongrounded three (3)-prong receptacles in existing lodging establishments shall be replaced with two (2)-prong receptacles or properly grounded;

G. Public hallways, stairways, landings, and foyers shall be sufficiently illuminated at all times to prevent tripping or other injuries to persons;

H. Exit signs shall be provided when guest room doors open to an interior corridor and where guest room doors open to the outside but not directly at grade level;

I. Exit signs shall be maintained in a clean and legible condition and shall be illuminated at all times that the building is occu-

ped. For new construction, supplemental directions signs, when necessary, shall be installed indicating the direction and way of egress;

J. All emergency lighting shall be maintained in good working condition.

(I) Emergency lighting shall be provided when guest room doors open to an interior corridor and where guest room doors open to the outside but not directly at grade level;

K. Temporary wiring and flexible cords shall not be used in place of fixed wiring.

(I) Use of extension cords longer than six feet (6') shall be prohibited unless provided with over-current protection or rated with properly sized wire. No more than two (2) extension cords per room may be used;

L. Wattage of light bulbs shall not exceed the wattage rating of corresponding light fixtures;

M. Empty light sockets are prohibited;

N. Circuit boxes shall be protected from physical damage and maintained in good condition. Storage of items that obstruct the vision of or access to circuit boxes is prohibited; and

O. Access to electrical panels shall be unobstructed; fuses and circuits must be labeled for identification.

(E) Fire Safety.

1. Operation and maintenance requirements for existing and new lodging establishments.

A. All facilities shall comply with all local building codes, fire codes and ordinances.

B. Housekeeping practices that ensure fire safety shall be maintained daily.

C. No fresh-cut Christmas trees shall be used unless they are treated with a flame resistant material. Documentation of the treatment shall be on file at the facility.

D. No door in any means of egress shall be locked against egress when the building is occupied.

(I) Delayed egress locks shall be permitted in buildings provided with a fire alarm system and/or an approved supervised automatic sprinkler system. No more than one (1) such device may be located in any one (1) egress path, and the door lock must unlock upon loss of power to the building, upon actuation of the fire alarm system, or upon actuation of the approved supervised automatic sprinkler system in the building.

E. Every bathroom door shall be designed to allow opening from the outside during an emergency when locked.

F. Doors serving a single dwelling unit shall be permitted to be provided with a lock, however, a key operation shall be allowed, providing that the key cannot be removed when the door is locked from the side from which egress is made.

G. Textile materials having a napped, tufted, looped, woven, nonwoven or similar surface shall not be applied to walls or ceilings unless they are treated with a flame resistant material. Documentation of the treatment shall be on file at the facility.

H. Foam plastic materials or other highly flammable or toxic material shall not be used as an interior wall, ceiling or floor finish unless approved by the administrative authority.

I. Hangings or draperies shall not be placed over exit doors or located to conceal or obscure any exit.

J. Mirrors shall not be placed on exit doors or adjacent to any exit that may confuse the direction of exit.

K. Portable fire extinguishers (5 pound, 2A-10BC) shall be required for the protection of all guests and located in the hallways, mechanical room(s), laundry area(s) and all other hazardous areas.

(I) The maximum travel distance to a fire extinguisher from a guest room door that opens into an interior corridor or a guest room door that opens to the outside but not directly at grade level shall be no greater than seventy-five feet (75') and accessible to the guest.

(II) All fire extinguishers shall be maintained in a fully charged and operable condition and inspected annually by a fire

extinguisher company, fire department representative or other entity approved by the administrative authority.

(III) Fire extinguishers having a gross weight not exceeding forty (40) pounds shall be installed so that the top of the extinguisher is not more than five feet (5') above the floor. Extinguishers having a gross weight more than forty (40) pounds shall be installed so that the top of the extinguisher is not more than three and one-half feet (3 1/2') above the floor. In no case shall the clearance between the bottom of the extinguisher and the floor be less than four inches (4").

L. There shall be no louvers or other air passages penetrating the wall except properly installed heating and utility installations.

M. Guest room doors shall be provided with room latches or other mechanisms suitable for keeping the doors closed.

N. Guest room doors shall be self-closing or provided with a closing device that closes the door automatically upon detection of smoke. Door-closing devices shall not be required in buildings protected throughout by an approved, automatic sprinkler system or when the guest room door opens directly to the outside of the dwelling unit at or to grade level.

O. Smoke detectors shall be installed in all sleeping rooms, cooking areas/kitchens, hallways, laundry rooms, mechanical rooms, hazardous areas and where specifically stated within this rule. Heat sensing devices may be installed in cooking areas in lieu of a smoke detector(s).

(I) Smoke detectors and heat sensing devices shall be maintained in good operating condition.

(II) If a wireless system is used, the system shall be designed, installed and maintained in accordance with the National Fire Protection Association 72, *National Fire Alarm Code 2002 Edition* or equivalent code.

(III) Smoke detectors shall be tested at least monthly or as needed to ensure they are operating properly and batteries shall be changed as needed.

(IV) All hardwired-interconnected smoke detectors shall be tested and approved annually by a sprinkler company, fire alarm company, fire department representative or other entity approved by the administrative authority.

(V) The administrative authority may require the installation of additional smoke detectors at any time.

P. All fire alarm systems and sprinkler systems shall be tested and approved annually by a fire alarm company, sprinkler company, fire department representative or other entity approved by the administrative authority.

Q. Individual fire sprinklers plumbed into a potable water line over gas water heaters and/or furnaces shall not be required to be tested and approved annually unless required by local ordinance.

R. A floor diagram reflecting the actual floor or exterior doors that lead outside of the dwelling unit at street or ground level arrangement, exit locations, and room identification shall be posted in a location and manner acceptable to the administrative authority in every guest room or immediately adjacent to every guest room door. Guest room doors leading directly to the outside of the dwelling unit at grade level are not required to post a floor diagram.

S. A copy of an emergency evacuation plan and employee instruction guide shall be kept on file that is accessible by all staff. All staff shall be able to demonstrate knowledge of the emergency evacuation plan.

T. Fire safety information shall be available so that guests may make an informed decision as to evacuate to the outside, evacuate to an area of refuge, remain in place, or employ any combination of the three (3) options.

2. Existing lodging establishments shall also meet the following requirements:

A. All facilities that use stairs as a component in the means of egress shall comply with the following:

(I) All open face stairs shall have guards placed on the sides. Guards shall be placed so that a four inch (4") diameter sphere cannot pass through them;

(II) Handrails for stairs shall not be less than thirty-four inches (34") and not more than thirty-eight inches (38") above the surface of the tread, measured vertically to the top of the rail from the leading edge of the tread;

(III) Railings for balconies shall not be less than forty-two inches (42") in height. Guards shall be placed so that a four (4") inch diameter sphere shall not pass through them; and

(IV) Existing handrails, railings and guards for stairs may continue to be used subject to approval of the administrative authority;

B. All facilities that use ramps as a component in the means of egress shall comply with the following:

(I) Ramps shall have a minimum width of forty-four inches (44") in all facilities;

(II) Ramps shall have a slip resistant surface;

(III) Ramps that are greater than six inches (6") in height shall have handrails and guards placed on each side. The handrails and guards shall comply with the stair requirements in (3)(E)2.A.(I)-(IV); and

(IV) Existing ramps may continue to be used subject to approval of the administrative authority;

C. Floors that separate stories in a building shall be maintained as a smoke barrier to provide a basic degree of compartmentation;

D. Openings through floors, such as hoistways for elevators, shaftways used for light, ventilation or building services; or expansion joints and seismic joints used to allow structural movements shall be enclosed with fire barriers (vertical), such as wall or partition assemblies whose fire resistance rating is not less than thirty (30) minutes. Such enclosures shall be continuous from floor to floor. Openings shall be protected as appropriate for the fire resistance rating of the barrier;

E. Service openings such as laundry chutes, dumbwaiters and inclined and vertical conveyors shall be provided with closing devices and must be kept closed when not in active use. Outlet doors for trash or laundry chutes shall open only to a separate room designed exclusively for that purpose. This room shall be provided with a one (1)-hour fire rated door that is self-closing. Existing installations may continue to be used upon approval of the administrative authority;

(I) Service openings provided with closing devices shall be self-closing, with a positive-latching frame and door assembly of one (1)-hour fire rating.

(II) Vertical conveyors and chutes shall be separately enclosed by walls or partitions. Service openings shall not open to an exit. Existing installations may continue to be used upon approval of the administrative authority;

F. All guest rooms shall have a means of egress to the outside of the building at or to grade level;

G. Egress routes that have been approved prior to February 2002 shall not be altered without prior approval by the administrative authority;

H. Dead-end corridors or hallways shall not exceed fifty feet (50');

I. No door or path of travel in a means of escape shall be less than twenty-eight inches (28") wide. Bathroom doors shall not be less than twenty-four inches (24") wide;

J. All guest rooms opening into an interior corridor(s) shall be separated by walls and twenty (20)-minute fire protection-rated doors, forty-four millimeters (44 mm) (one and three-fourths inch (1 3/4")) solid-bonded wood-core doors, steel-clad (tin-clad) wood doors, solid-core steel doors with positive latch and closer, or as approved by the administrative authority;

K. Existing transoms shall be permitted but must be permanently fixed in the closed position;

L. Smoke detectors and heat sensing devices should be installed on the ceiling, preferably in the center, but no less than four inches (4") from the wall of the sleeping area or on a sleeping room wall between four and twelve inches (4"-12") from the ceiling or as otherwise approved by the administrative authority;

M. If a battery-operated detector is routinely not operational, the owner shall install a detector that is hardwired with a battery backup;

N. By June 2007, all smoke detectors and heat sensing devices shall be hardwired with battery backup; and

O. Existing fire alarm systems and sprinkler systems shall be maintained in good working order.

3. New lodging establishments shall meet these additional requirements. In addition to the required certification that the establishment has been designed and erected in accordance with the 2002 Edition of a national code(s), the DHSS has outlined minimum requirements for the maintenance of fire safety components and the installation of smoke detectors, fire alarm systems, sprinkler systems, and fire extinguishment to provide adequate life safety protection to ensure the safety of the occupants.

A. Lodging establishments meeting the definition of a bed and breakfast may have two (2) secondary means of egress that are independent and remote from one another in lieu of a primary means of egress.

B. Smoke detectors and/or heat sensing devices shall be installed on the ceiling, preferably in the center, but no less than four inches (4") from the wall of the sleeping area or on a sleeping room wall between four and twelve inches (4"-12") from the ceiling.

(I) All smoke detectors and/or heat sensing devices shall be hardwired with battery backup.

C. A fire alarm system shall be installed and maintained in accordance with the National Fire Protection Association 72, *National Fire Alarm Code 2002 Edition* or equivalent code and maintained in good working order. Exception 1: Single story buildings with guest room doors that open directly to the outside at grade level. Exception 2: Buildings with no more than three (3) occupiable stories and with no more than four (4) guest rooms per building with guest room doors that lead directly outside at or to grade level.

(I) When a fire alarm system is required, all smoke detectors and/or heat sensing devices shall be interconnected, except those located in sleeping rooms.

D. All buildings shall be protected throughout by an approved, supervised automatic sprinkler system in accordance with the National Fire Protection Association 13, *Standard for the Installation of Sprinkler Systems 2002 Edition* or the *National Fire Protection Association 13R Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height 2002 Edition* or equivalent code.

(I) Bed and breakfasts and buildings with no more than three (3) occupiable stories, where all guest rooms have a door that opens directly to the outside at or to grade level or to an exterior exit access are not required to be protected throughout by an approved, supervised automatic sprinkler system.

(F) Swimming Pools/Spas. Design, maintenance and operation of swimming pools, spas, and other bathing facilities shall be in accordance with the following requirements:

1. New swimming pools and swimming pools undergoing a major renovation, such as installing a diving board or slide, shall be designed by a professional engineer and certified by a professional engineer, architect or other qualified professional approved by the administrative authority. The design must comply with a national swimming pool code;

2. Requirements regarding the general safety of swimming pools are as follows:

A. Swimming pools shall be protected by a fence, wall, building or other enclosure that is at least four feet (4') in height.

The enclosure shall be made of a durable material. Artificial barriers shall be constructed so as to afford no external handholds, footholds, or opening large enough to pass a four inch (4") diameter sphere through. Existing installations may continue to be used upon approval of the administrative authority;

B. Gates shall be equipped with a self-closing and positive self-latching closure mechanism. The latch shall be installed as high as possible, but no greater than four feet (4'), to preclude access of a toddler;

C. Doors leading into an indoor pool area shall be installed with self-closing and positive self-latching closure mechanism(s). The closure mechanism shall be installed as high as possible, but no lower than four feet (4') in height. Other means of precluding the access of a toddler into the indoor pool area must be approved by the administrative authority;

D. All natural barriers, hedges, swimming pool covers, or other protective devices must be approved by the administrative authority;

E. Depth of water shall be plainly marked with four inch (4")-high numbers, of a contrasting color to the pool background color, at or above the water surface on the vertical pool wall and on the edge of the deck, at maximum and minimum points of break between the deep and shallow portions, and at intermediate increments of depth, spaced at not more than twenty-five feet (25') intervals measured peripherally.

(I) Markings shall be on both sides and ends of the swimming pool.

(II) Where depth markings cannot be placed on the vertical walls above the water level, other means shall be used so that the markings will be plainly visible to persons in the swimming pool;

F. Lifesaving equipment, consisting of both a throwable device and a reaching device, shall be provided for all swimming pools. Swimming pools over two thousand (2,000) square feet and up to four thousand (4,000) square feet of water surface area shall have two (2) throwable and reaching devices. Approval by the administrative authority shall be required for swimming pools in excess of four thousand (4,000) square feet of water surface area.

(I) A throwable device shall be a U.S. Coast Guard approved device, fitted with a one-quarter inch (1/4")-diameter line with a length of 1.5 times the maximum width of the swimming pool or fifty feet (50'), whichever is less and a reaching device shall be a life pole or shepherd's crook type of pole, having blunted ends with a minimum length of twelve feet (12') or as approved by the administrative authority. This equipment shall:

(a) Be mounted in conspicuous places, distributed around the pool deck;

(b) Be kept in good repair and ready condition; and

(c) Be kept in an established location and shall be used only for its intended purpose;

G. Whenever the swimming pool area is less than two thousand (2,000) square feet of water surface area and is opened for use and no lifeguard service is provided, warning signs shall be placed in plain view of the entrances and inside the pool area which state "WARNING—NO LIFEGUARD ON DUTY" with plainly legible letters;

H. Swimming pools having two thousand (2,000) square feet of water surface area or greater shall have a certified lifeguard present at all times the pool is available for use. In swimming pools with two thousand (2,000) square feet of water surface area or more, one (1) additional certified lifeguard shall be provided for each additional two thousand (2,000) square feet of water surface area;

I. A first aid kit must be readily available to lodging employees for pool use at all times. The first aid kit shall be stored in an easily accessible location (such as the front office);

J. No glass containers shall be used in the swimming pool area;

K. The swimming pool and pool deck shall be kept clean of sediment, floating debris, visible dirt and algae; free of cracks, peeling paint and tripping hazards. Pools shall be refinished when the pool surface cannot be maintained in a safe and sanitary condition;

L. Rooms that house a gaseous chlorine introduction system shall be located on the opposite side of the pool from the direction of the prevailing winds and must provide the following features:

(I) A respiratory protective device suitable to provide protection during exposure to chlorine gas. This device shall be housed in a convenient location outside the chlorine room, which is quickly and readily accessible;

(II) An airtight duct at a maximum of eight inches (8") above the floor that terminates at a safe point of discharge to the outside away from the pool deck;

(III) A ventilating fan, capable of one (1) air change per minute and operated from a switch located outside the chlorine room door in conjunction with the airtight duct;

(IV) A louvered air intake near the ceiling;

(V) Adequate lighting with the light switch located outside the chlorine room, adjacent to the chlorine room door; and

(VI) A plastic bottle of ammonia for leak detection; automatic chlorine detectors are recommended;

M. Chlorine and chlorinating equipment shall be housed in a separate room. This room shall have no openings to other interior openings; and

N. Chlorine-feeding devices shall be designed to automatically terminate gas feed when the water supply flow is interrupted. The release of chlorine gas shall be terminated when the recirculation pump is shut off;

3. Requirements regarding the water quality of swimming pools and spas are as follows:

A. Swimming pools and spas shall be designed and maintained to provide for continuous disinfection of the water with a chemical or process which is an effective disinfectant and which imparts an easily measurable, active residual;

B. The disinfecting materials and methods shall not be dangerous to public health, create objectionable physiological effects, or impart toxic properties to the water;

C. An easily adjustable, automatic disinfection feeder shall be provided for the continuous application of disinfectant to the pool and/or spa water. The concentration of disinfectant in the pool and/or spa water must be maintained at the following levels:

(I) When chlorine is the disinfectant, a free chlorine residual of at least one parts per million (1.0 ppm) shall be maintained throughout the pool. When bromine is the disinfectant, a minimum residual between three and five (3-5) ppm shall be maintained throughout the spa; and

(II) Other disinfecting materials or methods are subject to approval of the administrative authority and may only be used when it has been demonstrated that they provide a satisfactory residual which is easily measured and operated according to the manufacturer's specifications;

D. An appropriate test kit shall be provided and capable of properly measuring disinfectant and pH residual;

E. The pH of the swimming pool and spa water shall be maintained at a level between 7.2 and 7.8; and

F. Swimming pool water shall have sufficient clarity that the main drain cover is readily visible at the deepest point of the pool when viewed from the side of the pool;

4. Requirements regarding the maintenance and operation of swimming pools and spas are as follows:

A. A boundary line between the shallow and deep water shall be marked at the point where the swimming pool slope begins, or at the five foot (5') depth, by a line of contrasting color on the floor and walls of the pool, and by a safety rope and floats equipped with float keepers;

B. Steps, ladders or stairs shall be provided at the shallow end (less than five feet (5')) and steps or ladders shall be provided in the

deep end (greater than five feet (5')). If the pool is over thirty feet (30') wide, such steps, ladders or stairs shall be installed on each side.

(I) Pool steps, ladders, and stairs shall be easily cleanable, corrosion-resistant and equipped with non-slip treads.

(II) All ladders shall be designed so as to provide a handhold. Where steps or ladders are provided, there shall be a handrail at the top of each side thereof extending over the coping of the edge of the deck. When stairs are provided, there shall be a handrail provided.

(III) Pool steps, ladders, stairs and handrails shall be maintained in good repair at all times;

C. Daily operating records shall be maintained and be available upon request. The residual concentration of the disinfectant used in the pool and/or spa, pH, water temperature and the date and time the information was collected shall be recorded;

D. Indoor pool areas and chemical storage rooms shall be vented directly to the exterior or vented to a room that is vented directly to the exterior;

E. Any chemical applied in swimming pools and/or spas shall be used, handled, stored and labeled in accordance with the manufacturer's specifications;

F. Main drain grates shall be whole and openings shall not be over one-half inch (1/2") wide. Main drain grates shall be in good repair, firmly affixed at all times and designed and maintained to prevent user entrapment;

G. All pool and spa equipment shall be kept clean and in good repair at all times;

H. Diving boards and slides shall be maintained in good repair at all times;

I. A cleaning system shall be provided to remove dirt from the bottom of the pool;

J. Surface skimmers, strainer baskets and perimeter overflow systems shall be kept clean and in good repair;

K. Water shall be maintained at the overflow level; and

L. Discharged pool water shall conform to the DNR regulations;

5. Requirements regarding the lighting and electrical systems for swimming pools and spas are as follows:

A. Artificial lighting shall be provided at swimming pools used at night or which do not have adequate natural lighting so that all portions of the pool, including the bottom, are readily seen without glare;

B. All lighting shall be maintained in good repair at all times;

C. All receptacles on the property shall be located at least ten feet (10') from the inside walls of a pool. One (1) receptacle to provide power for a recirculating pump motor on permanently installed swimming pools shall be permitted not less than five feet (5') from the inside walls of the pool provided the receptacle is single, of the locking and grounding types and protected by a ground-fault circuit interrupter;

D. All receptacles located within twenty feet (20') of the inside walls of a pool shall be protected by a ground-fault circuit interrupter;

E. Switching devices on the property shall be located at least five feet (5') from the inside walls of a pool unless separated from the pool by a solid fence, wall or other permanent barrier; and

F. Swimming pool areas over which utility-owned, operated and maintained supply lines, service drops, electrical lines and communication lines (i.e., telephone, cable TV) pass shall be approved in writing by the utility company;

6. The recirculation system serving the swimming pool and/or spa shall operate continuously or in accordance with manufacturer's specifications/recommendations or other engineering criteria;

7. Spas shall meet the additional following requirements: Exemption—a spa used under direct supervision of qualified medical personnel is excluded:

A. The maximum water depth shall be four feet (4') measured from the water line. The maximum depth of any seat or sitting bench shall be two feet (2') measured from the water line;

B. Water temperature controls shall be provided to prevent water temperatures from exceeding one hundred four degrees Fahrenheit (104°F). The controls shall be accessible only to the swimming pool operator;

C. Outlets shall be designed so that each pumping system prevents user entrapment;

D. The agitation system shall be separate from the water treatment recirculation system. The agitation system shall be connected to a timer; and

E. A legible sign visible from the spa shall be provided. The sign shall contain wording to the effect of:

(I) Caution. Any person having an acute or chronic disease such that use of this spa might adversely affect their health should consult a physician before using this spa;

(II) Do not use the spa alone or without supervision;

(III) Do not use the spa longer than ten (10) minutes;

(IV) Children shall be accompanied by an adult; and

(V) Additional precautionary information may be added as deemed necessary by the lodging establishment or manufacturer.

(G) Plumbing/Mechanical. Installation and maintenance of plumbing supply lines and equipment shall be in compliance with local codes when applicable. In the absence of local codes the following requirements shall be met:

1. General requirements are as follows:

A. Hot and cold running water shall be available at all times;

B. Restrooms shall be provided with adequate ventilation to prevent excessive condensation, mold or algae growth or odors. New lodging establishments shall provide mechanical ventilation;

C. Adequate venting of the drainage system shall be provided and vents shall extend above the roof;

D. All fixtures shall be adequately and properly trapped;

E. Openings for the passage of plumbing shall be vermin proof; and

F. No fitting, connection, device or method of installation shall obstruct or retard the flow of water, wastes, sewage or air in the drainage or venting system;

2. Certification of Inspection by the Missouri Division of Fire Safety shall be required for the following water heaters, boilers and pressure vessels. Evidence of inspection and approval shall be posted on the premises, as well as on file with the State Fire Marshal's Office, Division of Fire Safety;

A. Water heaters with heat input greater than two hundred thousand British thermal units per hour (200,000 Btu/hr) or fifty-seven and six-tenths kilowatts (57.6 kW) if electric;

B. All boilers; and

C. Hot water storage tanks greater than one hundred twenty (120) gallon capacity, and water temperatures exceeding two hundred ten degrees Fahrenheit (210°F), and heat input greater than two hundred thousand (200,000) Btu/hr or fifty-seven and six-tenths (57.6) kW if electric;

3. Water heaters and pressure vessels not required to be inspected and approved by the Missouri Division of Fire Safety:

A. Shall be rated for a minimum working pressure of one hundred twenty-five pounds per square inch (125 psi). The maximum pressure allowed shall be permanently marked on all water heating units and holding tanks; and

B. A separate valve or switch shall be provided to shut the fuel supply off to water heating units;

4. Safety devices to prevent the excessive buildup of heat and/or pressure in the vessel must be provided on water heaters and other pressure vessels.

A. Temperature and pressure (T&P) relief valves are required on or adjacent to hot water holding tanks but cannot be separated from the tank by a check valve or shutoff valve.

B. Temperature and pressure (T&P) relief valves are required on water heaters and must be installed so that the sensing element extends into the tank and monitors the temperatures in the top six inches (6") of the tank.

(I) Relief valves shall bear imprints, plates or tags to indicate the specifications of the valve.

(II) Btu rating of the temperature component of the T&P relief valve must be equal to or greater than the input Btu of the vessel it serves.

(III) Pressure rating of the pressure component of the T&P relief valve must be equal to or less than the pressure rating of the vessel it serves.

C. Relief valve discharge pipes shall be made of rigid pipe approved for water distribution with a temperature rating of two hundred ten degrees Fahrenheit (210°F) or other materials approved by the manufacturer to be used for this purpose and—

(I) Be the same diameter, or larger, as the relief valve outlet;

(II) Be installed so as to drain by gravity flow and shall have no more than one (1) elbow or be installed according to manufacturer's specifications;

(III) Valves shall not be connected to the relief valve discharge pipe; and

(IV) Shall not discharge so as to be a hazard or a potential cause of damage;

5. All backflow devices used must meet 10 CSR 60-11.010 Prevention of Backflow or local codes. Potable water supplies shall be protected from sources of potential contamination.

A. The following shall be protected by reduced pressure principle backflow prevention assembly: boiler units, fire sprinkler systems with chemical additives, lawn sprinklers with facilities for injection of pesticides, herbicides or other chemicals and pumped or repressurized cooling or heating systems.

B. The following shall be protected by a double-check valve assembly: facility wide fire sprinklers not using chemical additives and lawn sprinklers without facilities for injection of pesticides, herbicides or other chemicals.

C. The following shall be protected by vacuum breakers: threaded faucets, flush valves and shower spray hoses. Commercial dishwashers and commercial laundry machines shall be protected by either a vacuum breaker or an air gap.

D. The following shall be protected by air gaps: relief valve discharge pipes from water heaters and water holding tanks, make-up waterlines for cooling towers, potable water inlets to all plumbing fixtures, water softeners, condensation waterlines and discharge lines from commercial laundry machines. Swimming pool feed lines shall be protected by either an air gap or double-check valve assembly.

E. The following shall be protected by air breaks: ice containers and ice machines.

F. Fire sprinklers plumbed into a potable water line over gas water heaters and/or furnaces shall not be required to install a backflow device unless required by local ordinance;

6. Liquid propane (LP) gas systems shall be tested for leaks on a yearly basis.

(H) Heating, Venting and Air Conditioning (HVAC) Equipment. Air conditioning, heating, ventilating ductwork and related equipment shall be installed using acceptable procedures in a safe manner and be in good operating condition.

1. Unvented fuel-fired heaters, fireplaces or other appliances and portable electrical space heaters shall be prohibited from use in all areas of the lodging establishment unless approved in writing by the manufacturer for commercial use.

2. Existing unvented fireplace installations may continue to be used, upon approval of the administrative authority, if the following conditions are met:

A. The appliance and installation meet the National Fire Protection Association 54 ANSI 223.1-2002, 2002 Edition *National Fuel Gas Code* requirements for residential use;

B. The local gas company conducts an inspection to assure the appliance and installation meet the National Fire Protection Association 54 ANSI 223.1-2002, 2002 Edition National Fuel Gas Code requirements for residential use;

C. A carbon monoxide detector is installed in accordance with (3)(D)1.I.(III)-(V); and

D. The unvented fireplace is not the primary source of heat.

3. Gas and electric heating equipment shall be equipped with thermostatic controls.

4. Gas water heaters, gas furnaces and other gas appliances shall be properly vented to the outside, and the flue pipe shall be constructed of galvanized pipe or material recommended by the manufacturer. All galvanized pipe shall be secured by screws at every joint in the pipe.

5. Joints in gas supply pipes shall be located outside the furnace cabinet housing.

6. Gas shutoff valves shall be located next to all gas appliances, gas furnaces and gas water heaters.

7. Rooms containing gas water heaters and/or gas furnaces shall have an automatic sprinkler head installed off the domestic water system with a hardwired smoke detector located directly outside the room or shall be protected throughout by an approved, supervised automatic sprinkler system or designed in a manner to be fire resistant.

A. The sprinkler head should be rated for one hundred sixty-five degrees Fahrenheit (165°F) or appropriately rated for the specific location and installed according to manufacturer's specifications or approved by the administrative authority. Existing installations may continue to be used upon approval of the administrative authority.

B. The sprinkler head should be installed in a manner so the water spray will encompass the gas water heater and/or furnace.

C. Pipes tying into the domestic water line shall be one-half inch (1/2") or three-fourths inch (3/4") copper pipe or chlorinated polyvinyl chloride (CPVC) pipe. Existing installations may continue to be used upon approval of the administrative authority.

D. CPVC pipe must meet National Fire Protection Association 13 Standard for the Installation of Sprinkler Systems 2002 Edition and National Fire Protection Association 13R Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height 2002 Edition.

E. A smoke detector is not required to be located directly outside the room if the door to the gas water heater and/or furnace room opens directly to the outside.

F. A smoke detector is not required to be located directly outside the room if another smoke detector is already located within ten feet (10') of the door.

G. A fire resistant room shall consist of walls and ceilings designed to be fire resistant for a minimum of one (1) hour, with a one (1)-hour fire rated door and doorjamb. All openings into this room shall be designed with one (1)-hour fire rated materials.

8. If a gas furnace or gas water heater is located inside a garage, it shall be at least eighteen inches (18") above the finished floor and enclosed inside a fire resistant room.

9. Furnaces shall be equipped with an electrical fused switch to protect the unit from electrical overloading and to disconnect the electrical supply.

10. Furnace rooms and rooms containing gas water heaters or any other fuel-fired appliance shall be provided with vents or other approved means to supply adequate combustion air for the units.

A. Except as specified in (3)(H)10.D. below, there shall be two (2) combustion air vent openings in each room containing gas or fuel-fired appliances.

(I) One (1) shall be located at the lower level and the other at the upper level.

(II) One (1) combustion air vent opening shall be permitted if the vent opening extends directly to the outside of the struc-

ture. This opening shall be one (1) square inch per three thousand (3,000) Btu input of the total gas appliances located in the room.

B. The vent size openings for the combustion air shall be:

(I) Measured at one (1) square inch per one thousand (1,000) Btu input if the combustion air is drawn from inside the structure;

(II) Measured at one (1) square inch per four thousand (4,000) Btu input if the air is drawn from outside the structure.

C. Other means of venting furnace rooms and rooms containing gas water heaters or any other fuel-fired appliance may be subject to approval from the administrative authority; and

D. Furnace rooms and/or rooms containing gas or fuel burning appliances having a volume of fifty (50) cubic feet per one thousand (1,000) Btu/hour shall not be required to have additional venting.

(I) The sum of the required volume shall be calculated for all the gas appliances located within the space.

(II) Rooms communicating directly with the space in which the appliances are installed through openings not furnished with doors, and through combustion air openings sized and located appropriately shall be considered a part of the required volume.

11. Gas appliances shall have a clearance around them of one inch (1") from the sides and back and six inches (6") from the front of the unit or be installed to manufacturer's specifications.

*AUTHORITY: sections 192.006 and 315.005-315.065, RSMo 2000. This rule was previously filed as 13 CSR 50-66.010. Original rule filed as Missouri Division of Health E 9.01 on Sept. 4, 1957, effective Sept. 14, 1957. Rescinded and readopted: Filed June 28, 2001, effective Feb. 28, 2002. Rescinded and readopted: Filed: May 2, 2005.*

*PUBLIC COST: This proposed rule will cost state agencies or political subdivisions seven thousand nine hundred eighty-seven dollars (\$7,987) in the first year and two hundred fifty dollars (\$250) annually thereafter in the aggregate.*

*PRIVATE COST: This proposed rule would cost private entities eight hundred forty-three thousand five hundred nineteen dollars (\$843,519) in the first year in the aggregate; however, due to a pre-existing rule that is being rescinded for this proposed rule, the majority of the industry, or ninety-eight percent (98%), has come into compliance with the sanitation and safety standards outlined in this proposed rule. Therefore, of the eight hundred forty-three thousand five hundred nineteen dollars (\$843,519) estimated in the aggregate for the cost of compliance with this rule, three hundred eighty-seven thousand two hundred seventy-six dollars (\$387,276) remain as a one-time cost to the industry in the aggregate. The proposed rule would cost private entities fifty-nine thousand four hundred seventy-nine dollars (\$59,479) annually thereafter in the aggregate. This proposed rule would cost private entities in areas without a fire ordinance one hundred fourteen thousand two hundred twenty-four dollars (\$14,224) to implement in the aggregate. This proposed rule would cost private entities in areas with a fire ordinance seven thousand six hundred sixty-seven dollars (\$7,667) to implement in the aggregate.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with Bryant McNally, Division Director, Missouri Department of Health and Senior Services; Division of Environmental Health and Communicable Disease Prevention; PO Box 570, Jefferson City, MO 65102-0570. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.*



**FISCAL NOTE  
PUBLIC COST**

**I. RULE NUMBER**TITLE: TITLE 19 – Missouri Department Of Health And Senior ServicesDIVISION: DIVISION 20 – Environmental Health & Communicable Disease PreventionCHAPTER: CHAPTER 3 – General SanitationTYPE OF RULEMAKING: PROPOSED RULERULE NUMBER AND NAME: 19 CSR 20-3.050 Sanitation And Safety Standards For Lodging Establishments**II. SUMMARY OF FISCAL IMPACT**

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Department of Health & Senior Services	\$2, 870 one-time cost; \$ 250 annually
Local Public Health Agencies	\$5, 117 one-time cost

**III. WORKSHEET**Department of Health and Senior Services

## Training Costs:

1. Materials \$200
2. Travel Expenses \$1, 025 (\$515 + \$510)

Mileage Roundtrip

From Jefferson City Regional Office to Kansas City	300 miles X \$0.345 = \$103
From Jefferson City Regional Office to Springfield	290 miles X \$0.345 = \$100
From Jefferson City Regional Office to St. Louis	270 miles X \$0.345 = \$93
From Jefferson City Regional Office to Macon	180 miles X \$0.345 = \$62
From Jefferson City Regional Office to Poplar Bluff	456 miles X \$0.345 = \$157
	Total = \$515

Lodging and Meals

(\$60 lodging + \$42 for meals) X 5 Regional Offices = \$510

## Printing Costs:

1. Rule Book \$1, 645 per 3, 000
2. Inspection Forms \$250 per 3, 000

One time cost: \$200 Materials + \$1, 025 Travel Exp + \$1, 645 Rule Books = \$2, 870

Annual cost: \$250 cost of printing inspection forms

Local Public Health Agencies

Training Costs:

1. Travel Expenses                    \$5, 117    (\$3, 967 + \$1, 150)

Average Mileage Roundtrip

From Local Public Health Agency to Regional Office 100 miles

115 Local Public Health Agencies

100 miles X 115 Local Public Health Agencies = 11, 500 miles

11, 500 miles X 0.345 = \$3, 967

Meals

\$10 for lunch X 115 Local Public Health Agencies = \$1, 150

**IV. ASSUMPTIONS**

The fiscal impact on the Department of Health and Senior Services is associated with the cost of printing, paper, supplies, and travel expenses (mileage @ \$0.345/mile), hotel costs and meals.

FISCAL NOTE  
PRIVATE COST

## I. RULE NUMBER

Title: 19-DEPARTMENT OF HEALTH AND SENIOR SERVICESDivision: 20-Environmental Health & Communicable Disease PreventionChapter: 3-General SanitationType of Rule Making: PROPOSED RULERule Number and Name: 19 CSR 20-3.050 Sanitation and Safety Standards for Lodging Establishments.

## 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 type of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
1,600	Existing Lodging Establishments	\$843,519 One time cost
<b>Actual cost of implementation for existing lodging establishments*</b>		
547	Existing Lodging Establishments	\$387,276 (True impact)
20	Existing Lodging Establishments replacing an ice machine	\$16,040 Annually
50	Existing Lodging Establishments with a sprinkler system	\$13,200 Annually
50	Existing Lodging Establishments with a fire alarm system	\$10,000 Annually
547	Existing Lodging Establishments using LP gas	\$20,239 Annually
5	New Lodging Establishments in areas without a fire ordinance	\$114,224 One time cost
15	New Lodging Establishments in areas with a fire ordinance	\$7,667

\*Due to a pre-existing rule that is being rescinded for this proposed rule, the majority of the industry, or 98%, has come into compliance with the sanitation and safety standards outlined in this proposed rule. Therefore, of the \$843,519 estimated in the aggregate for the cost of compliance with this rule, only \$387,276 remain as a cost to the industry for hardwiring their smoke detectors (in the rule there is a compliance date set for June 2007).

III. WORKSHEET

1. Costs to lodging establishment owners purchasing a self-dispensing ice machine: \$802 (\$2377 for self-dispensing ice machine - \$1575 for bin ice machine).

2. At 20 lodging establishments purchasing or replacing a self-dispensing ice machine, the initial cost to this classification will be:

$$\begin{aligned} & 20 \text{ lodging establishments} \times \$802 \text{ per machine} \\ & 20 \times \$802 = \$16,040 \end{aligned}$$

3. Cost to lodging establishment owners, offering coffee in the lobby or in guest rooms, to install a three (3)-compartment sink: \$485.

4. a. At 757 current lodging establishments offering coffee in the guest rooms or lobby, the cost to this classification will be:

$$757 \text{ lodging establishments} \times \$485 \text{ cost of three compartment sink} = \$367,145.$$

b. At 5 new establishments per year in areas without a fire ordinance x \$485 cost of three compartment sink = \$2,425

c. At 15 new establishments per year in areas with a fire ordinance x \$485 cost of three compartment sink = \$7,275

5. Cost to lodging establishment owners, using fuel-fired equipment or appliances that pose a carbon monoxide risk, to install a carbon monoxide detector: \$49

6. a. At 800 lodging establishments using fuel-fired equipment or appliances that pose a carbon monoxide risk, the cost to this classification will be:

$$\begin{aligned} & 800 \text{ lodging establishments} \times \$49 \text{ cost of carbon monoxide detector} \\ & 800 \times \$49 = \$39,200 \end{aligned}$$

b. At 3 new establishments per year in areas without a fire ordinance x \$49 = \$147

c. At 8 new establishments per year in areas with a fire ordinance x \$49 = \$392

7. Cost to lodging establishment owners, to place a smoke detector in cooking areas/kitchens, hallways, laundry rooms, mechanical rooms, hazardous areas and over fuel-burning water heaters: \$19

8. At 548 lodging establishments, without a sprinkler system, fire alarm system or located within an area without a fire ordinance, that must add additional smoke detectors, the cost to this classification will be:

$$\begin{aligned} & 548 \text{ lodging establishment} \times [\$19 \text{ cost of smoke detector} \times (2 \text{ hallways} + 1 \text{ laundry room} + 1 \text{ mechanical} \\ & \text{room})] \\ & 548 \times (\$19 \times 4) \\ & 548 \times \$76 = \$41,648 \end{aligned}$$

9. Cost to lodging establishment owners, who have a sprinkler system, to have the system inspected annually: \$264

10. At 50 of the 501 lodging establishments, with sprinkler systems, located in an area without a fire ordinance, that must have the system inspected annually, the cost to this classification will be:

50 lodging establishments x \$66/hour cost of inspector x 4 hour inspection = \$13,200.

11. Cost to lodging establishment owners, who have a fire alarm system, located in an area without a fire ordinance, to have the system inspected annually: \$200.
12. At 50 of the 501 lodging establishments, with fire alarms systems in an area without a fire ordinance, that must have the system inspected annually, the cost to this classification will be:

50 lodging establishments x \$50/hour cost of inspector x 4 hour inspection = \$10,000

13. Cost to lodging establishment owners to hardwire the smoke detectors: \$708
14. At 547 lodging establishments located in an area without a fire ordinance that are required to hardwire the smoke detectors, the cost to this classification will be:

547 lodging establishments x [(28 rooms + 4 hallways/laundry room/mechanical room) x \$19 cost of smoke detector + \$100 for materials]  
 547 x (\$608 + \$100)  
 547 x \$708 = \$387,276.

15. Cost to new lodging establishments to install a fire alarm system: \$3,625
16. At 5 new lodging establishments built annually in a area without a fire ordinance, the cost to this classification will be:  
 5 lodging establishments x [\$1,750 control panel + (5 exits x \$150 pull station) + (5 hallways/corridors x \$125 horn) + (\$500 labor)]  
 5 x [\$1,750 + 750 + 625 + 500]  
 5 x \$3,625 = \$18,125.

17. Cost to new lodging establishments to install a sprinkler system: \$18,700
18. At 5 new lodging establishments built annually in a area without a fire ordinance, the cost to this classification will be:

5 lodging establishments x [\$2/ft<sup>2</sup> for materials x 28 rooms x 200 ft<sup>2</sup> per room) + \$7,500 for labor]  
 5 x [\$11,200 + \$7,500]  
 5 x \$18,700 = \$93,500.

19. Cost to lodging establishment owners, with LP gas systems, to have the system inspected annually: \$37
20. At 547 lodging establishments using LP gas, the cost to this classification will be:

547 lodging establishments x \$37 inspection cost = \$20,239

21. Cost to lodging establishment owners, with fuel-burning appliances, to install a sprinkler head: \$15
22. At 550 lodging establishments with fuel-burning appliances, the cost to this classification will be:

550 x (\$5 sprinkler head + \$10 for materials)  
 550 x \$15 = \$8,250

#### IV. ASSUMPTIONS

1. It is estimated that twenty (20) new and/or existing lodging establishments will be purchasing or replacing an ice machine annually. This rule now requires all new ice machines to be self-dispensing.

- The cost of self-dispensing ice machines is higher than that of a bulk bin ice machine. The assumption made is that an ice machine was going to be purchased, so the cost for the bulk bin ice machine has been subtracted from that of the self-dispensing ice machine.
2. It is estimated that over half of the lodging establishments currently operating provide some food service to its guests, which would require a method for washing, rinsing and sanitizing the reusable items required for the food service operation. Therefore, the assumption made is the remaining 757 lodging establishments, not providing food service, would provide coffee to its guests and now be required to provide a method to wash, rinse and sanitize the coffee pot/maker.
  3. It is estimated that half of the lodging establishments currently operating are using fuel-fired equipment, appliances or have an enclosed parking garage. This rule now requires establishments using equipment, etc that pose a carbon monoxide risk to install carbon monoxide detectors.
  4. It is estimated that 548 lodging establishments are currently operating in an area without fire ordinances and without a sprinkler system. This rule now requires additional smoke detectors to be placed in cooking areas, hallways, laundry rooms, mechanical rooms, hazardous areas and over fuel-burning appliances. The assumption made is that these lodging establishments may have a few of these areas (example: two hallways, a mechanical room and a laundry room, but not a kitchen) but not all of the listed types of areas in each establishment, therefore, four additional smoke detectors was used for the calculations.
  5. It is estimated that 501 lodging establishments are currently operating with a sprinkler system. It is also estimated that of these 501 lodging establishments with sprinkler systems, 50 are located outside of an area with a fire ordinance. This rule now requires sprinkler systems to be inspected annually, since 50 are in areas without a fire ordinance they would now be required to hire the services of a professional to complete an inspection. The assumption made is that the remaining 451 lodging establishments are receiving an inspection under their local fire ordinance.
  6. It is estimated that 501 lodging establishments are currently operating with a fire alarm system. It is also estimated that of these 501 lodging establishments with fire alarm systems, 50 are located outside of an area with a fire ordinance. This rule now requires fire alarm systems to be inspected annually, since 50 are in areas without a fire ordinance they would now be required to hire the services of a professional to complete an inspection. The assumption made is that the remaining 451 lodging establishments are receiving an inspection under their local fire ordinance.
  7. It is estimated that 547 lodging establishments were not built to a nationally recognized building code and are located in areas without a fire ordinance. This rule now requires smoke detectors to be hardwired. The assumption made is that the remaining establishments were built to a building code and are currently hardwired or are in fire ordinance areas.
  8. It is estimated that a total of 20 new lodging establishments will be built annually. Of these, 15 will be areas with a fire ordinance and 5 will be in areas without a fire ordinance. It is assumed all of these 20 will offer coffee in guest rooms or in the lobby and will thus need three compartment sinks. It is estimate that 3 of the 5 new establishments in areas without a fire ordinance and 8 of the 15 establishments in areas with a fire ordinance will be using fuel-fired equipment and appliances and will need to install carbon monoxide detectors.
  9. It is estimated that 5 lodging establishments will be built in areas without a fire ordinance annually. The assumption made is that one control panel will be required, that there will be 5 exits requiring pull stations, 5 areas requiring horns and \$500 for additional materials and labor.
  10. It is estimated that 5 lodging establishments will be built in areas without a fire ordinance annually. The assumption made is that the average size establishment built in these areas will have 28 guest rooms, the size of the guest rooms will be 200 ft<sup>2</sup>, the materials will cost \$2.00 per square foot, and that labor costs will be \$7,500.
  11. It is estimated that 547 lodging establishments are located outside metropolitan areas and are using LP gas. The assumption made is that all gas companies will charge a fee for inspecting the system.
  12. It is estimated that 501 lodging establishments are currently operating have a sprinkler system. The assumption made is that of the remaining 1, 100, half of them (550) have fuel-burning appliances. This rule now requires fuel-burning appliances to be housed in a fire safe room or have a sprinkler head installed over the appliance and a smoke detector installed within the room.

**Initial Cost to Existing Lodging Establishments**

<b>Reason for Cost</b>	<b>Actual Cost</b>
Three (3)-compartment sinks	\$367, 145
Carbon monoxide detectors	\$39, 200
Additional smoke detectors	\$41, 648
Hardwiring the smoke detectors	\$387, 276
Sprinkler head & smoke detector over fuel-burning appliance	\$8, 250
<b>Total Cost</b>	<b>\$843, 519</b>

**Initial Cost to New Lodging Establishments in areas without a fire ordinance**

<b>Reason for Cost</b>	<b>Actual Cost</b>
Three (3)-compartment sinks	\$2,452
Carbon monoxide detectors	\$147
Installation of a fire alarm system	\$18, 125
Installation of a sprinkler system	\$93, 500
<b>Total Cost</b>	<b>\$114, 224</b>

**Initial Cost to New Lodging Establishments in areas with a fire ordinance**

<b>Reason for Cost</b>	<b>Actual Cost</b>
Three (3)-compartment sinks	\$7,275
Carbon monoxide detectors	\$392
<b>Total Cost</b>	<b>\$7,667</b>

**Title 20—DEPARTMENT OF INSURANCE  
Division 400—Life, Annuities and Health  
Chapter 10—Health Carrier Utilization Review Activities**

**PROPOSED RULE**

**20 CSR 400-10.100 Minimum Time Allowed for a Consumer to File a Grievance**

*PURPOSE:* This rule sets forth the minimum amount of time a health carrier that offers a managed care plan can require an enrollee or member to file an appeal. This rule is promulgated pursuant to section 376.1399, RSMo, and implements sections 376.1382 and 376.1385, RSMo.

(1) Definitions.

(A) "Adverse determination" shall have the same meaning as found in section 376.1350, RSMo.

(B) "Grievance" shall have the same meaning as found in section 376.1350, RSMo.

(C) "Health carrier" shall have the same meaning as found in section 376.1350, RSMo.

(D) "Managed care component" shall mean a plan that offers an incentive to use specific providers or requires the use of utilization review.

(E) "Utilization review" shall have the same meaning as found in section 376.1350, RSMo.

(2) Minimum Time to File a Grievance.

(A) No health carrier that offers a plan with a managed care component shall limit the time that a first level grievance may be filed to less than one hundred eighty (180) days from the date that written notice was sent from the health carrier to the enrollee informing the enrollee of the adverse determination.

(B) In the case of a grievance filed for reasons other than an adverse determination, the health carrier shall not limit the time a first level grievance may be filed to less than one hundred eighty (180) days from the date the health carrier sent notice to the enrollee informing the enrollee of the event that gave rise to the grievance.

(C) No health carrier that offers a plan with a managed care component shall limit the time that a second level grievance may be filed to less than one hundred eighty (180) days from the date the carrier allows to file the first level grievance or less than one hundred eighty (180) days from the date the health carrier sent notification to the person who submitted the grievance of the carrier's resolution of said first level grievance, whichever is later.

(D) Nothing in this section shall limit or supersede any statute of limitations found in the *Revised Statutes of Missouri*.

*AUTHORITY:* sections 374.045 and 376.1399, RSMo 2000. Original rule filed May 2, 2005.

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

*PRIVATE COST:* This proposed rule will cost private entities six thousand eight hundred dollars (\$6,800) in the aggregate.

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS:* A public hearing will be held on this proposed rule at 10:00 a.m. on July 6, 2005. The public hearing will be held at the Harry S Truman State Office Building, Room 530, 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 rule, until 5:00 p.m. on July 6,

2005. Written statements shall be sent to Kevin Hall, 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.



**FISCAL NOTE  
PRIVATE COST**

**I. RULE NUMBER**

Rule Number and Name:	20 CSR 400-10.100, Minimum Time Allowed for a Consumer to File a Grievance
Type of Rulemaking:	Proposed Rule

**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:
115	<b>Comprehensive Medical Expense (Major Medical) Carriers</b>	<b>\$5750</b>
21	<b>Health Maintenance Organizations</b>	<b>\$1050</b>

\* The aggregate cost to licensed insurance companies includes the aggregate cost to all licensees.

**III. WORKSHEET**

115 (Comp. Med. Expense Carriers) x \$50 (one time filing fee) = \$5750

21 (Health Maintenance Organizations) x \$50 (one time filing fee) = \$1050

\$5750 + \$1050 = \$6800

**IV. ASSUMPTIONS**

Pursuant to the 2003 Life & Health Supplement report, there are 115 Comprehensive Medical Expense (Major Medical) carriers in Missouri. There are also 21 Health Maintenance Organizations that would need to comply with this Regulation. If all carriers file changes to their contracts in order to reflect the intent of this Regulation, then the estimated one time expense will be approximately \$6,800.00

**Title 21—MISSOURI FAMILY TRUST  
Division 10—Director and Board of Trustees  
Chapter 1—General Organization**

**PROPOSED AMENDMENT**

**21 CSR 10-1.010 General Organization.** The Missouri Family Trust Fund proposes to amend sections (2), (3) and (4) and to add a new section.

*PURPOSE:* This amendment updates regulations to reflect statutory changes.

(2) The responsibility for the proper operation of the trust and the direction of its policies is vested in a board of trustees. The administration of the detailed affairs of the Missouri Family Trust is [in] under the charge of the executive director, who is appointed by the board of trustees. Pursuant to section 402.215, RSMo, the board of trustees is authorized and directed to establish and administer the Missouri Family Trust and to advise, consult with, and render services to departments and agencies of the state of Missouri and to other nonprofit organizations which qualify as organizations pursuant to Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended, and which provide services to Missouri residents with a disability.

(A) The board of trustees is further authorized to execute all documents necessary to establish and administer the Missouri Family Trust, including formation of a not-for-profit corporation created pursuant to Chapter 355, RSMo, and to qualify as an organization pursuant to section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended.

(B) The assets of the board of trustees and assets held in trust pursuant to the provisions of sections 402.199–402.220, RSMo shall not be considered state money, assets of the state or revenue for any purposes of the state constitution or statutes. The property of the board of trustees and its income and operations shall be exempt from all taxation by the state or any of its political subdivisions per section 402.205.1(3), RSMo.

(3) Pursuant to section 402.199.1(5), RSMo, it is in the best interest of the people of Missouri to encourage, enhance and foster the ability of families and friends of Missouri residents and residents of adjacent states with mental or physical impairments to supplement, but not to replace, the basic support provided by state government and other governmental programs and to provide for medical, social and other supplemental services for such persons. Further, section 402.205.1(2), RSMo stipulates that all state agencies shall disregard the trust as a resource when determining eligibility for Missouri residents for assistance under Chapter 209, RSMo.

[[3]] (4) House Bill 318 of the 85th General Assembly of Missouri, as amended by Senate Bill 311 of the 86th General Assembly, Senate Bill 338 of the 87th General Assembly, and Senate Bill 768 of the 88th General Assembly created the Missouri Family Trust Board of Trustees as a body corporate and an instrumentality of the state. The statutory provisions relating to the establishment and operation of the Missouri Family Trust are provided for in sections 402.199–402.225, RSMo. [The rules in 21 CSR 10-1–21 CSR 10-4 relate to and are part of the Family Trust and the Charitable Trust.]

[[4]] (5) Anyone wishing to obtain information concerning the Missouri Family Trust may do so by contacting the Executive Director at [600 E. 22nd Street, Kansas City, MO 64108] 1500 Vandiver Drive, Suite 100, Columbia, MO 65202 or by calling [[816] 889-3140] (573) 882-3388 or (888) 6712-1069. The website may be accessed at [www.missourifamilytrust.org](http://www.missourifamilytrust.org).

*AUTHORITY:* sections 402.210.6 and 402.225, RSMo [1994] 2000 and 402.215.1 RSMo [Cum. Supp. 1996] Supp. 2004. Original rule filed July 30, 1992, effective April 8, 1993. Amended: Filed Nov. 2, 1994, effective March 30, 1995. Amended: Filed April 11, 1997, effective Sept. 30, 1997. Amended: Filed April 29, 2005.

*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 LaVonne Daniels, Ph.D., Executive Director, Missouri Family Trust, 1500 Vandiver Drive, Suite 100, Columbia, MO 65202. 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 21—MISSOURI FAMILY TRUST  
Division 10—Director and Board of Trustees  
Chapter 1—General Organization**

**PROPOSED AMENDMENT**

**21 CSR 10-1.020 Definitions.** The Missouri Family Trust proposes to amend the Purpose and sections (3) through (8) and to add eleven new sections.

*PURPOSE:* This amendment will implement revisions to statutes.

*PURPOSE:* This rule expands on definitions and certain terms found in sections 402.199–[402.223] 402.225, RSMo.

(3) Charitable trust. The trust established to provide benefits for individuals as set forth in section 402.215, RSMo.

(4) Department. Department means the Missouri Department of Mental Health.

(5) Disability. A mental or physical impairment that substantially limits one or more major life activities, whether the impairment is congenital or acquired by accident, injury or disease, and where the impairment is verified by medical findings.

[[3]] (6) Donor. Donor as used shall mean any person, firm, organization or governmental agency who shall establish [an account] a Trust Account with the Missouri Family Trust for the benefit of a life beneficiary, as defined in the Act.

(7) Life beneficiary or beneficiary. A designated beneficiary of the Missouri Family Trust.

[[4]](8) Missouri Family Trust. Missouri Family Trust as used and defined in the Act shall be considered to include the family trust and charitable trust [, and charitable trust] established pursuant to sections 402.199–402.225, RSMo.

(9) Net Income. The earnings received on investments less administrative expenses and fees.

(10) Principal balance. The fair market value of all contributions made to a Trust Account, less distributions, determined as of the end of the calendar month immediately preceding the occurrence giving rise to any determination of principal balance.

*[(5)](11)* Regulations of the Charitable Trust. Regulations of the charitable trust of the Missouri Family Trust shall mean the regulations adopted by the board of trustees.

**(12) Requesting party. The party desiring arbitration.**

**(13) Responding party. The other party in arbitration of a dispute regarding benefits to be provided by the trust.**

*[(6)] (14)* Successor cotrustee. Successor cotrustee means the person(s) who may be designated by the donor, from time-to-time, **or in the absence of such, as designated by the board of trustees** pursuant to section 402.215.2(2), RSMo.

**(15) Successor Trust. Successor trust means the trust established upon distribution by the board of trustees pursuant to notice of withdrawal or termination and administered as set forth in section 402.215, RSMo.**

*[(7)](16)* Terms and conditions of the Missouri Family Trust shall mean the terms and conditions adopted by the board of trustees.

**(17) Trust. Trust means the Missouri Family Trust established pursuant to sections 402.200 to 402.220, RSMo.**

**(18) Trust Account. A separate account consisting of property contributed by a donor, and the earnings thereon, held as part of the Missouri Family Trust in trust for the benefit of the life beneficiary identified by the donor.**

**(19) Trustee. A member of the Missouri Family Trust board of trustees established pursuant to sections 402.200 to 402.220, RSMo.**

*[(8)] (20)* Trustee of *[s]*Successor *[t]*Trust. Trustee of the *[s]*Successor *[t]*Trust means the person(s) who may be designated by the donor, from time-to-time, to be the trustee of the *[s]*Successor *[t]*Trust established pursuant to section 402.215.2(9), RSMo.

*AUTHORITY: sections 402.210.6., RSMo 2000. and 402.215.1. and 2., RSMo [1994] Supp. 2004. Original rule filed July 30, 1992, effective April 8, 1993. Amended: Filed April 29, 2005.*

*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 LaVonne Daniels, Ph.D., Executive Director, Missouri Family Trust, 1500 Vandiver Drive, Suite 100, Columbia, MO 65202. 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 21—MISSOURI FAMILY TRUST  
Division 10—Director and Board of Trustees  
Chapter 1—General Organization**

**PROPOSED AMENDMENT**

**21 CSR 10-1.030 Meetings of the Board of Trustees.** The Missouri Family Trust proposes to amend section (2) and to add a new section.

*PURPOSE: This amendment will implement statutory revisions.*

(2) Special meetings of the board of trustees may be called by the president or any three (3) members of the board. The person(s) calling a special meeting of the board shall establish the time, *[and]* place, **and method** for holding any special meeting of the board. Special meetings shall be held in *[Jefferson City]* **Columbia** unless all the members of the board consent to a different location. Written or printed notice of special meetings stating the place, day and hour of the meeting shall be delivered not less than ten (10) days before the meeting, either personally or by ordinary mail, at the direction of the president, the secretary or the board members calling the meeting. The notice shall state the purpose(s) for which the meeting is called. Any notice of meeting sent by mail shall be deemed delivered when deposited in the United States mail with postage prepaid, addressed to the board member at his/her address as it appears on the records of the board. The public notice requirements of the Open Meetings Law shall be observed.

**(5) The executive committee shall consist of the officers of the board of trustees and such other person(s) as the president may appoint from time-to-time. The executive committee may meet periodically at the request of the president or his/her designee. The public notice requirements of the Open Meetings Law shall be observed when an executive committee meeting is scheduled and held.**

*AUTHORITY: sections 402.210.6., RSMo 2000 and 610.010–610.030, RSMo [1994] 2000 and Supp. 2004. Original rule filed July 30, 1992, effective April 8, 1993. Amended: Filed April 29, 2005.*

*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 LaVonne Daniels, Ph.D., Executive Director, Missouri Family Trust, 1500 Vandiver Drive, Suite 100, Columbia, MO 65202. 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 21—MISSOURI FAMILY TRUST  
Division 10—Director and Board of Trustees  
Chapter 2—Missouri Family Trust**

**PROPOSED AMENDMENT**

**21 CSR 10-2.010 Terms and Conditions of the Missouri Family Trust.** The Missouri Family Trust proposes to amend sections (1) through (13) and to add three new sections.

*PURPOSE: This amendment updates regulations to reflect statutory changes.*

(1) Contribution to the Missouri Family Trust *[Fund]*. In order to establish *[an account]* a **Trust Account** with the Missouri Family Trust Board of Trustees, a donor shall contribute the property described in the Missouri Family Trust Agreement (the Agreement) signed by the donor and an authorized representative on behalf of the board of trustees. *[The minimum contribution necessary to establish an account shall be five hundred dollars (\$500)].*

(A) The board of trustees shall establish and from time to time review the minimum contribution necessary to establish a Trust Account. Upon receipt of the required contribution, documents and fees, the board of trustees shall *[open an account]* establish a Trust Account for the benefit of the beneficiary designated in the Agreement (referred to as the beneficiary). No *[account]* Trust Account shall list more than two (2) donors, although contributions may be made to any particular account by an unlimited number of contributors. Additional contributions may be made *[in increments of not less than one hundred dollars (\$100) each]* at any time. The Missouri Family Trust may accept contributions to a Trust Account from any source, including trustees, personal representatives, personal custodians under Chapter 404, RSMo and other fiduciaries *[other than directly from the beneficiaries and their spouses]*. The Missouri Family Trust may also accept contributions from life beneficiaries and their respective spouses, subject to the provisions of section 402.215(11), RSMo.

*[(2)]* (B) Separate Trust Account for Beneficiary. The board of trustees shall hold the *[contributed property and the earnings on it]* Trust Account, in trust for the benefit of the beneficiary as part of the Missouri Family Trust (the Trust) on the terms and conditions described in this rule, in the Agreement and as provided in sections 402.199—/—402.225, RSMo. The board of trustees shall maintain the Trust Account as a separate account *[for that property and its earnings for the benefit of the beneficiary]*.

(C) The beneficiary shall not have the power to assign, convey, alienate or otherwise encumber any interest acquired in the income or principal of *[any trust estate referred to in this rule]* the Trust Account, nor shall that income or the principal or any interest of the beneficiary therein be liable for any debt incurred by the beneficiary, nor shall the principal or income of *[any trust estate]* a Trust Account be subject to seizure by any creditor of the beneficiary under any writ or proceeding in law or in equity, until that income or principal shall have been actually paid over and delivered to the beneficiary (section 402.217(1), RSMo).

(D) Except for the right of a donor pursuant to section 402.215.2(4), RSMo, and the right of any acting cotrustee pursuant to section 402.215.2(5), RSMo, to withdraw all or a portion of the Trust Account, neither the donor nor any acting cotrustee shall have the right to sell assign, convey, alienate or otherwise encumber, for consideration or otherwise, any interest in the income or principal of the Trust Account, nor shall such income or the principal or any interest of any beneficiary thereunder be liable for any debt incurred by the donor or any acting cotrustee, nor shall the principal or income of the Trust Account be subject to seizure by any creditor of any donor or any acting cotrustee under any writ or proceeding in law or in equity (section 402.217(2), RSMo).

(2) Designation of Beneficiary, Cotrustee and Successor. The donors must designate a specific person as the beneficiary of the Trust Account. In addition, the donor may name a cotrustee, including the donor, and a successor or successors to the cotrustee, to act with the trustees on behalf of the beneficiary, provided, however, a beneficiary shall not be eligible to be a cotrustee or a successor cotrustee; provided, however, that court approval of the specific person designated as the beneficiary and as cotrustee or successor trustee shall be required in connection with any Trust Account created pursuant to section 473.657 or 475.093, RSMo.

(3) Annual Agreement on Use of Funds. The designated cotrustee *[, if any,]* with the consent of the board of trustees shall, *[agree annually on]* from time to time but not less than annually, determine the amount of income or principal or both to be used to provide benefits and the nature and type of benefits to be provided for the beneficiary from the Trust Account.

(A) It is the purpose of the *[trust]* Trust Account and the Missouri Family Trust to supplement, not replace, any government benefits for the beneficiary's basic support to which that beneficiary may be entitled and to improve the quality of that beneficiary's life by providing him/her with those amenities which cannot otherwise be provided by public assistance or entitlement or other available sources.

(B) Permissible expenditures include, but are not limited to, more sophisticated dental, medical and diagnostic work or treatment than is otherwise available from public assistance, private rehabilitative training, supplementary education aid, entertainment, periodic vacations and outings, the transportation of the beneficiary or of friends or relatives of the beneficiary to visit him/her, expenditures to foster the interests, talents and hobbies of the beneficiary, and expenditures to purchase personal property and services which will make life more comfortable and enjoyable for the beneficiary but which will not defeat his/her eligibility for public assistance. The board of trustees, in its discretion, may make payments for a person to accompany the beneficiary on vacations and outings and for the transportation of the beneficiary or of friends and relatives of the beneficiary to visit him/her. Income or principal, or both, may be used to pay funeral and burial costs of the beneficiary.

(C) The board of trustees may make payments and distributions from the Trust Account in any one (1) or more of the following ways as the board of trustees may deem advisable, in those amounts and for those uses as will not defeat the beneficiary's eligibility for public assistance, namely:

*[(A)]*1. Directly to the beneficiary;

*[(B)]*2. To the legal guardian of the beneficiary;

*[(C)]*3. To any adult relative of the beneficiary to be held and expended by that relative for the support, education and welfare of the beneficiary;

*[(D)]*4. To any adult relative of the beneficiary as custodian for that beneficiary pursuant to the Missouri Transfers to Minors Law, the Missouri Personal Custodian Law or any other statute of similar import; or

*[(E)]*5. By the board of trustees itself expending that income or principal for the support, education, welfare and comfort of the beneficiary and, to that end, the board of trustees may make payments to any person, firm, corporation or governmental agency.

(D) *[Each quarter, any undistributed income shall be added to the principal. Expenditures]* Notwithstanding the provisions of this section (3) to the contrary, expenditures shall not be made from the Trust Account for the primary support or maintenance of the beneficiary, including his/her basic food, shelter and clothing being provided by state government and other governmental programs if, as a result, the beneficiary would no longer be eligible to receive public benefits or assistance to which s/he is then entitled. *[In the event that the board of trustees and the donor, serving as the designated cotrustee, shall be unable to agree either on the amount of income, principal, or both, to be used or the benefits to be provided, then none of the income or principal shall be used.]*

(E) In the event that the board of trustees and the designated cotrustee *[, other than the donor,]* shall be unable to agree either on the amount of income, principal, or both, from the Trust Account, to be used or the benefits to be provided, then either the board of trustees or the cotrustee shall have the right to request that the matter be resolved by arbitration, *[as provided in sections 402.199—402.225, RSMo]* which shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The requesting party shall send a written request for arbitration to the responding party and shall in such request set forth the name, address and telephone number of such requesting party's arbitrator. The responding party shall, within ten (10) days after receipt of the request for arbitration, set forth in writing to the requesting party the name, address and telephone number of the responding party's arbitrator. Copies of

the request for arbitration and response shall be sent to the director of the department. If the two (2) designated arbitrators shall be unable to agree upon a third arbitrator within ten (10) days after the responding party shall have identified such party's arbitrator, then the director of the department shall designate the third arbitrator by written notice to the requesting and responding parties' arbitrators. The three (3) arbitrators shall meet, conduct a hearing, and render a decision within thirty (30) days after the appointment of the third arbitrator. A decision of the majority of the arbitrators shall be binding upon the requesting and responding parties. Each party shall pay the fees and expenses of such party's arbitrator and the fees and expenses of the third arbitrator shall be borne equally by the parties. Judgment on the arbitrators' award may be entered in any court of competent jurisdiction.

*[(4) Donor May Revoke. The donor, during his/her lifetime, may revoke, in whole or in part, any gift made in accordance with this rule; provided, however, the donor first shall have given thirty (30) days' written notice to the board of trustees of the amount to be returned to the donor upon revocation; and, except in the case of revocation in whole, the amount remaining in the beneficiary's account, after a partial revocation, shall not be less than the current minimum contribution required to open an account for a beneficiary, pursuant to section (1). Every notice of revocation must be signed by the donor(s) of the account, unless either of the donors has died or become incapacitated, in which event the surviving donor shall have the right to revoke. In the event that at the time the donor shall have revoked his/her gift to the trust, the beneficiary shall not have received any benefits provided by use of trust income or principal, then an amount equal to one hundred percent (100%) of the original contribution (as defined in section (8)) shall be returned to the donor. Any undistributed net income shall be distributed to the charitable trust established, maintained and administered by the board of trustees pursuant to sections 402.199—402.225, RSMo (referred to as the charitable trust). In the event that at the time the donor shall have revoked his/her gift to the trust, the beneficiary shall have received any benefits provided by the use of trust income or principal, then an amount equal to ninety percent (90%) of the original contribution, reduced by any distributions or encroachments of principal previously made, shall be returned to the donor. The balance of the original contribution, as reduced, together with all undistributed net income, shall be distributed to the charitable trust. Any donor at any time voluntarily may waive the right to revoke by written notice to the board of trustees.]*

**(4) Donor May Revoke or Withdraw.** Any donor, except for the donor of a Trust Account created pursuant to section 473.657 or 475.093, RSMo, or 402.215.2(11), RSMo, may revoke any contribution to a Trust Account, in whole or in part, unless the donor shall have waived the right to revoke.

**(A)** The donor shall give thirty (30) days' written notice to the board of trustees of the amount to be returned to the donor and, except in the case of revocation in whole, the amount remaining in the Trust Account, after a partial withdrawal, shall not be less than the current minimum contribution required to open a Trust Account for a beneficiary.

**(B)** In the event that at the time of revocation or withdrawal from the Trust Account the beneficiary shall not have received any benefits provided by use of Trust Account income or principal, then an amount equal to one hundred percent (100%) of the amount requested shall be returned to the donor. In the case of complete revocation, any undistributed net income of the Trust Account shall be distributed to the charitable trust established,

maintained and administered by the board of trustees pursuant to sections 402.199–402.225, RSMo (referred to as the charitable trust).

**(C)** In the event that at the time of revocation or withdrawal from the Trust Account the beneficiary shall have received any benefits provided by the use of Trust Account income or principal, then an amount equal to ninety percent (90%) of the amount requested shall be returned to the donor. The balance of the amount requested, and in the case of complete revocation, any undistributed net income together with the balance of the principal balance of the Trust Account shall be distributed to the charitable trust.

**(D)** Every notice of revocation must be signed by the donor(s) of the Trust Account, unless either of the donors has died or become incapacitated, in which event the surviving donor shall have the right to revoke.

**(5) Cotrustee (Other Than Donor) May [Revoke] Withdraw.** *[Any designated cotrustee, other than the original donor, shall have the right, for good and sufficient reason stated in thirty (30) days' written notice to the board of trustees and the Missouri Department of Mental Health, to withdraw all or a portion of the original contribution, reduced by any distributions or encroachments previously made for the benefit of the beneficiary. In that event, the applicable portion of the original contribution (in accordance with sections 402.199–402.225, RSMo), as reduced by distributions or encroachments made for the benefit of the beneficiary, then shall be distributed to the Successor Trust created pursuant to and described in section (9); and the balance of the original contribution, as reduced, together with all undistributed net income, shall be distributed to the charitable trust.] Any acting cotrustee, except a cotrustee of a Trust Account created pursuant to section 473.657 or 475.093 or 402.215.2(11), RSMo other than the original donor, shall have the right, for good and sufficient reason stated in thirty (30) days' written notice to the board of trustees and the department, to withdraw all or a portion of the principal balance of the Trust Account. In that event, the applicable portion of principal balance shall be distributed as set forth in section 402.215.2(7), RSMo, to the Successor Trust created pursuant to and described in section 402.215.2(5), RSMo, and the balance of the principal balance together with all undistributed net income of the Trust Account, shall be distributed to the charitable trust. In the event that the board of trustees and the cotrustee shall be unable to agree upon whether the cotrustee has stated a good and sufficient reason to make that withdrawal, then either the board of trustees or the cotrustee shall have the right to request that the matter be resolved by arbitration, as [provided in sections 402.199–402.225, RSMo] described in section (3) of this rule.*

**(6) Termination by Board of Trustees.**

*[(A) In the event that a court, pursuant to a lawfully convened hearing with notice to the board of trustees, or a governmental agency shall make a determination that the trust's principal or income shall be liable for the beneficiary's primary support or maintenance otherwise provided at public or private, or public and private expense, or that any public benefits or assistance then being received by the beneficiary or to which the beneficiary may otherwise be entitled are denied or terminated by reason of the existence of the trust, then in that event, the board of trustees shall terminate the*

trust as to that beneficiary and the balance in the beneficiary's account shall be distributed in accordance with the provisions of section (4), if the donor is living, or in accordance with the provisions of section (5), if the donor is not living.]

[(B)] (A) [In the event that a] Except in the case of a Trust Account created pursuant to section 473.657 or 475.093 or 402.215.2(11), RSMo, if the beneficiary shall cease to have a disability or cease to be eligible [to participate in the trust and the] for services and neither the donor nor the then acting cotrustee shall [not] exercise his/her right to revoke pursuant to either section (4) or (5) of this rule, then the board of trustees, upon not fewer than thirty (30) days' written notice, [shall] may terminate the [trust as to that beneficiary] Trust Account and the balance in the [beneficiary's account] Trust Account shall be distributed in accordance with the provisions of [section (4), if the donor is living, or in accordance with the provisions of section (5), if the donor is not living] subsection 402.215.2(7), RSMo, to the trustee of the Successor Trust to be held, administered, and distributed by such trustee in accordance with the provisions of the successor trust described in section (13) of this rule.

[(C)] (B) In the event that extenuating circumstances shall arise which, in the reasonable opinion of the board of trustees, make the continuation of the [trust] Trust Account for the beneficiary impractical [or uneconomical], then, in that event, the board of trustees upon thirty (30) days' notice to the cotrustee, may terminate the [trust as to that beneficiary] Trust Account and the balance in the [beneficiary's account] Trust Account shall be distributed in accordance with the provisions of [section (4)] section 402.215.2(4), RSMo, if the donor is living, or in accordance with the provisions of [section (5),] section 402.215.2(7), RSMo if the donor is not living. In the event that the board of trustees and the acting cotrustee shall be unable to agree upon whether the continuation of the [trust] Trust Account for the benefit of the beneficiary is impractical [or uneconomical], then either the board of trustees or the cotrustee shall have the right to request that the matter be resolved by arbitration, as provided in [sections 402.199–402.225, RSMo] section (3) of this rule.

#### (7) Distribution of Principal Balance of Trust Account at Termination.

(A) Termination by Board of Trustees, beneficiary received no benefits from Trust Account. If at the time of withdrawal or termination the beneficiary has not received any benefits provided by the use of the Trust Account income or principal, then an amount equal to ninety percent (90%) of the principal balance shall be distributed to the Successor Trust, and the balance of the principal balance together with all undistributed net income of the Trust Account shall be distributed to the charitable trust as provided in section 402.215.2(6) and (7), RSMo.

(B) Termination by Board of Trustees, beneficiary received benefits from Trust Account in effect for not more than five (5) years. If at the time of withdrawal or termination the beneficiary received benefits provided by the use of the Trust Account income or principal and the Trust Account has been in effect for a period of not more than five (5) years from the date of the first contribution, then an amount equal to ninety percent (90%) of the principal balance shall be distributed to the Successor Trust, and the balance of the principal balance together with all undistributed net income of the Trust Account shall be distributed to the charitable trust as provided in section 402.215.2(6) and (7), RSMo.

(C) Termination by Board of Trustees or cotrustee, beneficiary received benefits from Trust Account in effect for more than five (5) years. If at the time of withdrawal or termination the beneficiary has received benefits provided by the use of the Trust Account income or principal, and provided that the Trust Account has been in effect for more than five (5) years from the date of the first contribution made to the Trust Account, then an

amount equal to seventy-five percent (75%) of the principal balance shall be distributed to the Successor Trust, and the balance of the principal balance together with all undistributed net income of the Trust Account shall be distributed to the charitable trust as provided in section 402.215.2(6) or (7), RSMo.

[(7)] (8) Death of Beneficiary.

[(A)] Except for a Trust Account created pursuant to section 473.657 or 475.093 or 402.215.2(9), (10) or (11), RSMo [if] if the beneficiary dies before receiving any benefits provided by the use of [trust] Trust Account income or principal, then an amount equal to one hundred percent (100%) of the [original contribution] principal balance shall be distributed to that person(s) [as] the donor shall have designated in the Agreement. Any and any undistributed net income of the Trust Account shall be distributed to the charitable trust. If at the [date] time of death [of the beneficiary,] the beneficiary shall have [been receiving] received benefits provided by the use of [trust] Trust Account income, principal, or both, then in that event, an amount equal to seventy-five percent (75%) of the [original contribution] principal balance, reduced by any distributions or encroachments of principal previously made, shall be distributed to the person(s) designated by the donor in the Agreement [;] and the balance of the [original contribution, as reduced,] principal balance together with all undistributed net income of the Trust Account, shall be distributed to the charitable trust. [Prior to making any distribution pursuant to the provisions of this section, the board of trustees may use income or principal, or both, to pay the funeral and burial costs of the beneficiary.]

#### [(B)] (9) Trust Account Created by Distribution from a Personal Representative of an Estate.

(A) In the event the [trust] Trust Account is created as a result of a distribution from a personal representative of an estate of which the [life] beneficiary is a distributee per section 473.657, RSMo, then if the [life] beneficiary dies before receiving any benefits provided by the use of [trust] Trust Account income or principal, an amount equal to one hundred percent (100%) of the [original contribution] principal balance shall be distributed to such person or persons who are the [life] beneficiary's heirs at law. The balance, if any, of the [original contribution] principal balance, together with all undistributed net income of the Trust Account, shall be distributed to the charitable trust.

(B) If at the time of death of the [life] beneficiary the [life] beneficiary shall have [been receiving] received benefits provided by the use of [trust] Trust Account income or principal or income and principal, then[,] an amount equal to seventy-five percent (75%) of the [original contribution] principal balance, reduced by any distributions or encroachments of Trust Account principal previously made, shall be distributed to such person or persons who are the [life] beneficiary's heirs at law. The balance of the [original contribution] principal balance, together with all undistributed net income of the Trust Account, shall be distributed to the charitable trust.

#### [(C)] (10) Trust Account Created as a Result of Recovery of Damages.

(A) In the event the [trust] Trust Account is created as a result of the recovery of damages by reason of a personal injury to the [life] beneficiary, then if the [life] beneficiary dies before receiving any benefits provided by the use of [trust] Trust Account income or principal, the state of Missouri shall receive all amounts remaining in the [trust] Trust Account up to an amount equal to the total medical assistance paid on behalf of such [life] beneficiary under a state plan under Title 42 of the United States Code, and then to the extent there is any amount remaining in the [trust] Trust Account, an amount equal to one hundred percent (100%) of the [original contribution] principal balance shall be distributed to such person or

persons who are the *[life]* beneficiary's heirs at law. *[The]* **If there are no heirs, the balance, if any, of the *[original contribution]* principal balance, together with all undistributed net income of the Trust Account, shall be distributed to the charitable trust.**

(B) If at the time of death of the *[life]* beneficiary, the *[life]* beneficiary shall have *[been receiving]* received benefits provided by the use of *[trust]* Trust Account income or principal, or income and principal then the state of Missouri shall receive all amounts remaining in the *[trust]* Trust Account up to an amount equal to the total medical assistance paid on behalf of such *[life]* beneficiary under a state plan under Title 42 of the *United States Code*, and then to the extent there is any amount remaining in the *[trust]* Trust Account, an amount equal to seventy-five percent (75%) of the *[original contribution]* principal balance, reduced by any distribution or encroachment of principal previously made, shall be distributed to such person or persons who are the *[life]* beneficiary's heirs at law. The balance of the *[original contribution]* principal balance, together with all undistributed net income of the Trust Account, shall be distributed to the charitable trust. **If there are no heirs, the balance of the principle balance, together with all undistributed net income of the Trust Account, shall be distributed to the charitable trust.**

*[(8) Definition of Original Contribution. For the purposes of these rules, original contribution shall mean the current principal balance of all contributions made to a particular account, but not including any appreciation in value of investments or accretions to the account which result from any source, such as dividends, interest and capital gains; in no event shall original contribution mean more than the total of all contributions made to a particular account.]*

**(11) Trust Account Established with the Assets of the Beneficiary.** In the event the Trust Account is established with the assets of the beneficiary by the beneficiary, a family member, the beneficiary's guardian, or pursuant to a court order, all in accordance with Title 42 of the *United States Code* section 1396p(d)(4)(C), then upon the death of the beneficiary the state of Missouri shall receive all amounts remaining in the Trust Account up to an amount equal to the total medical assistance paid on behalf of such beneficiary under a state plan under Title 42 of the *United States Code*, and then to the extent there is any amount remaining in the Trust Account, an amount equal to seventy-five percent (75%) of the principal balance shall be distributed to such person or persons who are the beneficiary's heirs at law and the balance of the principal balance, together with all undistributed net income of the Trust Account, shall be distributed to the charitable trust. **If there are no heirs, the balance of the principal balance, together with all undistributed net income of the Trust Account, shall be distributed to the charitable trust.**

**(12) Voluntary Agreement Regarding Distribution.** Notwithstanding the provisions of section 402.215(4) to (8), RSMo to the contrary, the donor may voluntarily agree that a smaller percentage of the principal balance of the Trust Account established by such donor than is provided in this rule be returned to the donor or distributed to the Successor Trust, as the case may be; and may agree that a corresponding larger percentage of the principal balance in such Trust Account be distributed to the charitable trust or to a designated restricted account within the charitable trust.

*[(9)]* **(13) Successor Trust.** Upon receipt of a notice of withdrawal from a designated cotrustee, other than the original donor, and a determination by the board of trustees that the reason for that withdrawal is good and sufficient, or upon issuance of notice of termination by the board of trustees, the board of trustees shall distribute and pay over to the designated trustee of the *[s]* Successor

*[t]* Trust, in trust, the applicable portion of the *[original contribution, reduced by any distributions or encroachments previously made for the benefit of the beneficiary.]* principal balance of the Trust Account as set forth in section (7), (10) or (11) of this rule, whichever is applicable, provided however, that court approval of distribution to a successor trustee shall be required with regard to any Trust Account created pursuant to section 473.657, or 475.093, RSMo.

(A) The designated trustee of the Successor Trust shall hold, administer and distribute the principal and income of the Successor Trust, in his/her discretion, for the maintenance, support, health, education and general well being of the beneficiary, recognizing that it is the purpose of the Successor Trust to supplement, not replace, any government benefits for the beneficiary's basic support to which that beneficiary may be entitled and to improve the quality of that beneficiary's life by providing him/her with those amenities which cannot otherwise be provided by public assistance or entitlement or other available sources. Permissible expenditures include, but are not limited to, more sophisticated dental, medical and diagnostic work or treatment than is otherwise available from public assistance, private rehabilitative training, supplementary education aid, entertainment, periodic vacations and outings, expenditures to foster the interests, talents and hobbies of the beneficiary, and expenditures to purchase personal property and services which will make life more comfortable and enjoyable for the beneficiary but which will not defeat his/her eligibility for public assistance. The trustee of the Successor Trust, in his/her discretion, may make payments for a person to accompany the beneficiary on vacations and outings and for the transportation of the beneficiary or of friends and relatives of the beneficiary to visit him/her. Quarterly any undistributed income shall be added to the principal. Expenditures shall not be made for the primary support or maintenance of the beneficiary, including his/her basic food, shelter and clothing, if, as a result, the beneficiary would no longer be eligible to receive public benefits or assistance to which s/he is then entitled. On the death of the beneficiary, the entire balance of the Successor Trust shall be distributed to that person(s) as the donor shall have designated *[in the Agreement]*.

*[(10)]* (B) Powers of the Trustee of the Successor Trust. The trustee of the Successor Trust shall have all powers granted to trustees acting pursuant to Chapter 456, RSMo and shall have any powers specifically granted to the trustee of Successor Trust under sections 402.199–402.225, RSMo.

*[(11)]* (14) Compensation of Trustees.

(A) The board of trustees may charge a reasonable fee to pay the costs and expenses of administration and organization of the *[trust]* Trust Account in accordance with 21 CSR 10-4.010.

(B) The designated cotrustee of the *[Family]* Trust Account and the trustee of the Successor Trust shall be entitled to reasonable compensation for his/her services, unless otherwise provided in the Agreement. Any corporate trustee of the *[Family]* Trust Account or Successor Trust shall be entitled to compensation in accordance with its published schedule of fees in effect at the time services are rendered. No trustee shall be required to audit or examine the books of a prior trustee and no trustee shall be required to post bond as a condition of serving as a trustee.

*[(12)]* (15) Responsibility for Investments. The responsibility and authority for investment and management of *[the]* Trust Account funds shall be vested in the board of trustees. The board of trustees shall have full power and authority to manage and control the *[trust]* Trust Account funds except, if the *[beneficiary's account]* Trust Account balance *[exceeds five thousand dollars (\$5,000)]* is ten thousand dollars (\$10,000) or more, the donor shall have the right to select investments, in accordance with the Investment Options Agreement executed by the donor and the board of trustees. The income earned, after deducting administrative expenses of the *[trust]* Trust Account and of the board of trustees, shall be credit-

ed to the accounts of the respective beneficiaries as provided in sections 402.199-402.225, RSMo.

*[(13)](16)* Powers of the Board of Trustees. The board of trustees shall have all powers granted to trustees acting pursuant to Chapter 456, RSMo and shall have any powers specifically granted to the board of trustees pursuant to sections 402.199-402.225, RSMo. The board of trustees shall have authority to appoint investment counselors, managers and advisors and to pay reasonable fees for those services. **The provisions of section 456.8-813, RSMo regarding the duty to inform and report to beneficiaries shall not, except as mandated under section 456.1-105, RSMo, apply to the Missouri Family Trust or the Trust Account.**

*AUTHORITY: section 402.210.6, RSMo [1994] 2000 and 402.215.2(1), RSMo Supp. [1996] 2004. Original rule filed July 30, 1992, effective April 8, 1993. Amended: Filed Nov. 2, 1994, effective March 30, 1995. Amended: Filed April 11, 1997, effective Sept. 30, 1997. Amended: Filed April 29, 2005.*

*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 LaVonne Daniels, Ph.D., Executive Director, Missouri Family Trust, 1500 Vandiver Drive, Suite 100, Columbia, MO 65202. 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 21—MISSOURI FAMILY TRUST  
Division 10—Director and Board of Trustees  
Chapter 3—Charitable Trust**

**PROPOSED AMENDMENT**

**21 CSR 10-3.010 Charitable Trust Regulations.** The Missouri Family Trust proposes to amend sections (2), (3), (5), (6) and (7).

*PURPOSE: This amendment will implement statutory revisions.*

(2) Responsibility for Investments. The responsibility and authority for investment and management of the funds held in the Charitable Trust shall be vested in the board of trustees. The board of trustees shall have full power and authority to manage and control the *[trust]* Charitable Trust funds held by it. *[The income earned, after deducting administrative expenses and fees of the trust and of the board of trustees,]* **The principal and income of the Charitable Trust shall be used as provided in this rule.**

(3) Powers of the Board of Trustees. *[The]* **With respect to the Charitable Trust, the board of trustees shall have all powers granted to trustees acting pursuant to Chapter 456, RSMo and shall have any powers specifically granted to the board of trustees pursuant to sections 402.199-402.225, RSMo. The board of trustees shall have authority to appoint those investment counselors, managers and advisors as it may select and to pay reasonable fees for those services. The provisions of section 456.8-813, RSMo regarding the duty to inform and report to beneficiaries shall not, except as mandated under section 456.1-105, RSMo, apply to the Charitable Trust or restricted accounts therein.**

(5) Beneficiaries.

(A) Any person who has a *[handicap]* disability, as defined in section 402.200(4), RSMo, or who is eligible for services provided by or through the Missouri Department of Mental Health (**department**) and who either has no immediate family or whose immediate family, in the reasonable opinion of the board of trustees, is financially unable to make a contribution to the trust sufficient to provide benefits for that individual, while maintaining that individual's eligibility for governmental entitlement funding, shall be eligible to become a beneficiary of the Charitable Trust. For the purposes of this rule, the term immediate family includes spouse, parents, children and siblings. The *[Missouri Department of Mental Health]* **department** and others may recommend to the board of trustees persons to become beneficiaries of the Charitable Trust.

*[(B)] Pursuant to a Contract for Payment of Client Funeral Services between the Department of Mental Health (DMH) and board of trustees, a DMH Client Funeral Account was established within the Charitable Trust. DMH, from time-to-time, shall authorize the board of trustees to make payment out of this account on behalf of DMH for the funeral services of clients of DMH. Any such DMH client for whom a payment is authorized shall be deemed to be a beneficiary of the DMH Client Funeral Account of the Charitable Trust.*

*[(C)] (B)* Anyone, with the consent of the board of trustees, may establish a restricted account within the Charitable Trust and shall be permitted to determine, with the consent of the board of trustees, the beneficiaries of *[this]* **such** restricted account.

(6) Use of Funds. Annually the board of trustees *[and the Missouri Department of Mental Health]* shall *[agree on]* **determine** the amount of **Charitable Trust** income or principal, or both, to be used to provide benefits and the nature and type of benefits to be provided to the beneficiaries of the Charitable Trust. It is the purpose of the Charitable Trust to supplement, not replace, any government benefits for the beneficiary's basic support to which that beneficiary may be entitled and to increase the quality of that beneficiary's life by providing him/her with those amenities which cannot otherwise be provided by public assistance or entitlement or other available sources. Permissible expenditures include, but are not limited to, more sophisticated dental, medical and diagnostic work or treatment than is otherwise available from public assistance, private rehabilitative training, supplementary education aid, entertainment, periodic vacations and outings, the transportation of the beneficiary or of friends or relatives of the beneficiary to visit him/her, expenditures to foster the interests, talents and hobbies of the beneficiary, and expenditures to purchase personal property and services which will make life more comfortable and enjoyable for the beneficiary but which will not defeat his/her eligibility for public assistance. The board of trustees, in its discretion, may make payments for a person to accompany the beneficiary on vacations and outings and for the transportation of the beneficiary or of friends and relatives of the beneficiary to visit him/her. The board of trustees may make payments and distributions in any *[one (1) or more of the following ways as]* **way that** the board of trustees may deem advisable, in those amounts and for those uses that will not defeat the beneficiary's eligibility for public assistance. *[, namely:*

*(A) Directly to the beneficiary;*

*(B) To the legal guardian of the beneficiary;*

*(C) To any adult relative of the beneficiary to be held and expended by that relative for the support, education and welfare of the beneficiary;*

*(D) To any adult relative of the beneficiary as custodian for that beneficiary pursuant to the Missouri Transfers to Minors Law, the Missouri Personal Custodian Law or any other statute of similar import; or*



(E) By the board of trustees itself expending that income or principal for the support, education, welfare and comfort of the beneficiary and, to that end, the board of trustees may make payments to any person, firm, corporation or governmental agency. Expenditures shall not be made for the primary support or maintenance of the beneficiary, including his/her basic food, shelter and clothing if, as a result, the beneficiary would no longer be eligible to receive public benefits or assistance to which s/he is then entitled.]

(7) Unused Income. Any Charitable Trust income not used shall be added to the principal [annually] of the Charitable Trust.

*AUTHORITY:* section 402.210.6, RSMo 2000 and 402.215.1, RSMo [1994] Supp. 2004. Original rule filed July 30, 1992, effective April 8, 1993. Amended: Filed Nov. 2, 1994, effective March 30, 1995. Amended: Filed April 29, 2005.

*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 LaVonne Daniels, Ph.D., Executive Director, Missouri Family Trust, 1500 Vandiver Drive, Suite 100, Columbia, MO 65202. To be considered, comments must be received within thirty days (30) after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**Title 21—MISSOURI FAMILY TRUST  
Division 10—Director and Board of Trustees  
Chapter 4—Fees**

**PROPOSED AMENDMENT**

**21 CSR 10-4.010 [Family Trust] Administrative Fees for Missouri Family Trust Accounts.** The Missouri Family Trust proposes to amend the title, the Purpose, and sections (1) and (2).

*PURPOSE:* This amendment updates regulations to reflect statutory changes.

*PURPOSE:* This rule establishes the fees to be charged by the board of trustees for administering [the family trust] Trust Accounts.

(1) Administrative Fee. The board of trustees shall charge [each account in the Family Trust an administrative fee of four dollars (\$4) per month, plus an annual asset value fee—] **administrative fees for a Trust Account as follows:**

(A) Six-tenths of one percent (.6 of 1% (.006)) on the first fifty thousand dollars (\$50,000);

(B) Five-tenths of one percent (.5 of 1% (.005)) on the next four hundred fifty thousand dollars (\$450,000);

(C) Four-tenths of one percent (.4 of 1% (.004)) on the value of all assets in excess of five hundred thousand dollars (\$500,000); and

(D) An income fee of eight percent (8%) of income received. ]

(A) Enrollment Fee. The enrollment fee is a one (1)-time charge for opening the Trust Account. Certain donors may qualify for a reduced fee. The schedule for enrollment fee reduction is based on federal poverty income guidelines.

(B) Annual Asset Value Fee. The annual asset value fee is charged for administering the Trust Account. The annual asset value fee is deducted on a quarterly basis.

(C) Distribution Fee. The distribution fee is charged for each distribution from a Trust Account. No distribution fee is charged for distributions made for enrollment, asset or closure fees.

(D) Annual Trustee Fee. The annual trustee fee is charged only for Trust Accounts where the Missouri Family Trust is the sole trustee for the beneficiary.

(E) Account Closure Fee. This fee is charged for processing the termination of a Trust Account.

(2) [Distribution Fee. One (1) check for each account per month shall be issued at no charge; ten dollars (\$10) shall be charged for each additional distribution.] **Administrative Fee Schedule.** The administrative fee schedule is established and periodically reviewed by the Missouri Family Trust Board of Trustees and may be periodically revised.

*AUTHORITY:* section 402.210.6, RSMo [Supp. 1991] 2000. Original rule filed July 30, 1992, effective April 8, 1993. Amended: Filed April 29, 2005.

*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 LaVonne Daniels, Ph.D., Executive Director, Missouri Family Trust, 1500 Vandiver Drive, Suite 100, Columbia, MO 65202. 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 21—MISSOURI FAMILY TRUST  
Division 10—Director and Board of Trustees  
Chapter 4—Fees**

**PROPOSED AMENDMENT**

**21 CSR 10-4.020 Administrative Fees for the Charitable Trust.** The Missouri Family Trust proposes to amend the title, and sections (1) and (2), and to delete section (3).

*PURPOSE:* This amendment will implement statutory revisions.

(1) Administrative Fee. [An asset fee of one percent (1%) per year of the market value of Charitable Trust assets, plus ten percent (10%) of Charitable Trust income shall be charged. Fees shall be deducted quarterly. The minimum annual fee is two hundred fifty dollars (\$250).] **An annual fee based on the asset value of the Charitable Trust is charged for administration of the Charitable Trust. The annual fee is established and periodically reviewed by the Missouri Family Trust Board of Trustees and may be periodically revised.**

(2) Restricted [Use] Accounts. [Anyone, with the consent of the board of trustees, may establish a restricted use account within the Charitable Trust. The net income earned by the contribution, after payment of the fees of the board of trustees, and principal shall be used to provide those benefits for the beneficiaries as the donor and the board of trustees may determine.] The fees to be charged to each restrict-

ed *[use]* account by the board of trustees shall be those set forth in section (1) unless otherwise agreed upon by *[the]* a donor and the board of trustees prior to the establishment of *[that]* a **particular restricted** account. *[Any agreement may be changed by the donor and the board of trustees.]*

*[(3) Burial Fund. Pursuant to a Contract for Payment of Client Funeral Services among the Department of Mental Health (DMH), Department of Insurance and board of trustees (referred to as Contract), a DMH Client Funeral Account was established within the Charitable Trust. The Contract provides for compensation of the board of trustees out of investment income earned by the DMH Client Health Funeral Account.]*

*AUTHORITY: section 402.210.6, RSMo [Supp. 1991] 2000. Original rule filed July 30, 1992, effective April 8, 1993. Amended: Filed April 29, 2005.*

*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 LaVonne Daniels, Ph.D., Executive Director, Missouri Family Trust, 1500 Vandiver Drive, Suite 100, Columbia, MO 65202. 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.*