

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

Entirely new rules are printed without any special 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 If an existing rule is to be amended or rescinded, it will have a heading of proposed amendment or proposed rescission.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.

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

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

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

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

agated, imported, exported or liberated to the wild in any manner, number, part, parcel or quantity, at any time, except as specifically permitted by these rules and any laws consistent with Article IV, sections 40-46 of the *Constitution of Missouri*.; **however, this Code shall not apply to other invertebrates except as specifically provided.**

(6) No person shall administer, by any means, any contraceptive or **reproductive inhibitor** to any species of wildlife outside of captivity in Missouri without written authorization of the director.

(8) With landowner permission, any species listed in the Approved Aquatic Species List in 3 CSR 10-9.110 may be released into privately[-] owned impoundments which are designated as waters of the state by virtue of having been stocked by the state, or because they are owned jointly, or as tenants in common or by corporate shareholders. Statewide seasons, methods and limits for all species will apply to these waters.

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. Original rule filed June 26, 1975, effective July 7, 1975. For intervening history, please consult the Code of State Regulations. Amended: Filed Sept. 14, 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 4—Wildlife Code: General Provisions

PROPOSED AMENDMENT

3 CSR 10-4.113 Ginseng. The commission proposes to amend sections (3) and (4).

PURPOSE: This amendment will clarify that ginseng dealer registration is required only for persons buying and selling ginseng roots, rather than the myriad of products containing ginseng that has been processed into powder, liquid or other forms.

(3) Any person, group or business that purchases ginseng **roots** in Missouri for resale must register annually with the department as a ginseng dealer, and submit quarterly reports of all transactions within fifteen (15) days of the preceding buying period and an annual report of inventory, on forms provided by the department which are included herein. Annual registration shall be contingent upon compliance with this rule and receipt of the required reports. All records required by this rule shall be retained for three (3) years.

(4) Any person, group or business that purchases ginseng **roots** in Missouri for resale, but is registered as a ginseng dealer in another

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 AMENDMENT

3 CSR 10-4.110 General Prohibition; Applications. The commission proposes to amend sections (1), (6) and (8).

PURPOSE: This amendment excludes invertebrates from the Wildlife Code except in specific instances.

(1) No bird, fish, **crayfish, mussel**, amphibian, reptile, mammal or other form of wildlife, including their homes, dens, nests, *[and]* eggs **and larvae** in Missouri shall be molested, pursued, taken, hunted, trapped, tagged, marked, enticed, poisoned, killed, transported, stored, served, bought, sold, given away, accepted, possessed, prop-

state and does not purchase or sell ginseng roots from an address in the state, is not required to register with the department as a ginseng dealer.

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. Original rule filed Aug. 29, 1983, effective Jan. 1, 1984. For intervening history, please consult the Code of State Regulations. Amended: Filed Sept. 14, 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 4—Wildlife Code: General Provisions**

PROPOSED AMENDMENT

3 CSR 10-4.130 Owner May Protect Property. The commission proposes to amend section (4).

PURPOSE: This amendment clarifies the requirement that both the carcass and pelt of any mountain lion killed under provisions of this rule must be turned over to the department within twenty-four (24) hours of being killed.

(4) Deer, turkey, black bears and endangered species that are causing damage may be killed only with the permission of an agent of the department and by methods authorized by him/her. Mountain lions attacking or killing livestock or domestic animals, or attacking human beings, may be killed without prior permission, but the kill must be reported immediately to an agent of the department and the **intact** mountain lion carcass, **including pelt**, must be surrendered to **[him/her] the agent** within twenty-four (24) hours.

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. Original rule filed Aug. 15, 1973, effective Dec. 31, 1973. For intervening history, please consult the Code of State Regulations. Amended: Filed Sept. 14, 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 5—Wildlife Code: Permits**

PROPOSED AMENDMENT

3 CSR 10-5.215 Permits and Privileges: How Obtained; Not Transferable. The commission proposes to amend section (5).

PURPOSE: This amendment adds the Resident Cable Restraint Permit to the list of permits that have specific expiration dates associated with particular seasons.

(5) Permits are nontransferable and are valid from date of purchase through the last day of February of the prescribed permit year; except the Migratory Bird Hunting Permit shall be valid through June 30, and the Resident Trapping Permit, **the Resident Cable Restraint Permit** and the Nonresident Furbearer Hunting and Trapping Permit shall be valid through April 10. Except as provided for permits purchased by telephone or through the Internet, no affidavit, receipt or other document may be issued or used in lieu of the required permit. Temporary permit authorization number(s) allowing immediate use of permit privileges may be provided for permits (except deer and turkey permits) purchased through the department's authorized telephone or Internet sales service provider. The temporary permit authorization number(s) and picture identification must be carried at all times while hunting, fishing or trapping until the actual permit(s) is received. Any permit issued or obtained by false statement or through fraud, or while privileges are revoked or denied by the commission, shall be invalid.

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 Sept. 14, 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 5—Wildlife Code: Permits**

PROPOSED AMENDMENT

3 CSR 10-5.352 Resident Firearms Antlerless Deer Hunting Permit. The commission proposes to amend provisions of this rule.

PURPOSE: This amendment makes a grammatical correction.

To pursue, take, possess and transport an antlerless deer during the firearms deer hunting season/s]. Fee: seven dollars (\$7).

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. Original rule filed June 11, 1997, effective March 1, 1998. For intervening

history, please consult the *Code of State Regulations*. Amended: Filed Sept. 14, 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 5—Wildlife Code: Permits**

PROPOSED AMENDMENT

3 CSR 10-5.552 Nonresident Firearms Antlerless Deer Hunting Permit. The commission proposes to amend provisions of this rule.

PURPOSE: This amendment makes a grammatical correction and adds the *Nonresident Managed Deer Hunting Permit* as another choice as a prerequisite to this permit.

To pursue, take, possess and transport an antlerless deer during the firearms deer hunting season/s/. A *Nonresident Firearms Any-Deer Hunting Permit* or a *Nonresident Managed Deer Hunting Permit* is required as a prerequisite to this permit. Fee: seven dollars (\$7).

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. Original rule filed July 8, 1998, effective March 1, 1999. Amended: Filed May 9, 2002, effective Oct. 30, 2002. Amended: Filed June 5, 2003, effective Nov. 30, 2003. Amended: Filed April 29, 2004, effective Sept. 30, 2004. Amended: Filed Sept. 14, 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 5—Wildlife Code: Permits**

PROPOSED AMENDMENT

3 CSR 10-5.554 Nonresident Archery Antlerless Deer Hunting Permit. The commission proposes to amend provisions of this rule.

PURPOSE: This amendment restates the requirements for this permit as clarification and standardization with other similar rules.

[Required in addition to the prescribed *Nonresident Archer's Hunting Permit t*]To pursue, take, possess and transport an antlerless deer during the archery hunting season. A **Nonresident Archer's Hunting Permit** is required as a prerequisite to this permit. Fee: seven dollars (\$7).

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. Original rule filed April 29, 2004, effective Sept. 30, 2004. Amended: Filed Sept. 14, 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 10-6.405 General Provisions. The commission proposes to amend sections (2), (3) and (4).

PURPOSE: This amendment adds reciprocal sport fishing privileges with the state of Iowa on shared waters of the *Des Moines River* and clarifies possession limits when aggregate limits for similar species apply.

(2) Permits required:

(C) Any person possessing a valid sport fishing license issued by the state of Iowa, Illinois, Tennessee, Kansas or Nebraska, or who is legally exempted from those license requirements, without further permit or license, may fish in the **Des Moines**, Mississippi and Missouri rivers and their backwaters within the boundary of Missouri and adjacent to the state where that person is licensed. These persons may also fish in the Missouri portion of any oxbow lakes through which the state boundary passes.

(3) Limits and Possession.

(F) A person may possess no more than two (2) statewide daily limits [of any species at any time] as prescribed in **3 CSR 10-6.505 through 3 CSR 10-6.620**.

(4) Reciprocal Privileges: **Des Moines**, Mississippi, Missouri and St. Francis Rivers.

(B) Regulations of the state where the person is licensed shall apply in Arkansas boundary waters. Missouri regulations shall apply in the Missouri portion of Iowa, Illinois, Kentucky, Tennessee, Nebraska and Kansas boundary waters. Persons licensed in Iowa, Illinois, Kentucky, Tennessee, Kansas and Nebraska, when fishing in waters in which they are not licensed to fish by Missouri, shall

comply with the most restrictive laws and regulations of the two (2) states.

(C) Persons must be licensed in Missouri to fish in tributaries of the **Des Moines**, Mississippi, Missouri and St. Francis rivers.

(D) Persons licensed in Arkansas or Iowa may not fish from or attach any device or equipment to land under the jurisdiction of Missouri.

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 Sept. 14, 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 10-6.410 Fishing Methods. The commission proposes to amend sections (4) and (8).

PURPOSE: This amendment changes the description of minnow traps to include other authorized live bait traps. Crawfish traps are also allowed under 3 CSR 10-6.605 Live Bait, and it is intended for all live bait traps to be attended within twenty-four (24) hours and to be labeled properly.

(4) [*Minnow*] **Live bait** traps, hooks, trotlines, throwlines, limb lines, bank lines or anchored jug lines (rendered immobile from the location where set) may not be left unattended for more than twenty-four (24) hours or must be completely removed. Unanchored jug lines must be personally attended at all times.

(8) [*Minnow*] **Live bait** traps, trotlines, throwlines, limb lines, bank lines, jug lines and live boxes shall be plainly labeled on a durable material with the full name and address of the person using the equipment.

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 Sept. 14, 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 10-6.415 Restricted Zones. The commission proposes to amend subsection (2)(F).

PURPOSE: This amendment establishes fishing methods in a portion of the Salt River.

(2) Fish may be taken only by pole and line from:

(F) Salt River from below Clarence Cannon Reregulation Pool Dam to Route A **except that fish may also be taken by longbow as prescribed in 3 CSR 10-6.550 from the no-boating zone (one thousand one hundred feet (1,100') below the Reregulation Dam) to Route A.**

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 Sept. 14, 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 10-6.510 Channel Catfish, Blue Catfish, Flathead Catfish. The commission proposes to amend section (1).

PURPOSE: This amendment changes the statewide limits for blue catfish and channel catfish.

(1) Daily Limit: Ten (10) channel catfish, [*and*] **five (5)** blue catfish [*in the aggregate*] and five (5) flathead catfish, except:

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 Sept. 14, 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 10-6.511 Experimental Catfish Hand Fishing Season, Methods, Limits. The commission proposes to amend sections (4) and (7).

PURPOSE: This amendment provides more explicit and detailed regulations for methods and reporting requirements for the experimental catfish hand fishing season.

(4) Hand Fishing Methods: **Only** [F]feet and bare hands may be used without the aid of hooks, **snorkeling or scuba equipment**, or other man-made devices. **Hand fishers may not possess fishing equipment, except a stringer, while on designated hand fishing waters or adjacent banks. Stringers may not be used as an aid for taking catfish, and may not be used until the fish is in possession at or above the surface of the water. Natural sticks may be used to locate catfish, but may not be used as an aid for taking catfish.** Catfish may be taken by [this method] **hand fishing** only from natural objects or natural cavities. Catfish may not be taken by hand fishing from any man-made object except those related to bona fide construction such as bridges, docks, boat ramps and rock rip rap. No part of any object may be disturbed or altered to facilitate harvest of catfish. [Hand fishers may not possess fishing equipment, except a stringer, while on designated hand fishing waters or adjacent banks.] **Catfish taken by hand fishing methods may not be possessed on waters closed to hand fishing.**

(7) Reporting: [Within ten (10) days following the close of the season, hand fishers shall submit a complete report on a form furnished by the department, showing the dates and waters fished, length, weight, species and sex of catfish taken and other biological data or a negative report if no fish were taken.] Every hand fisher shall keep an up-to-date, accurate record showing the date, waters fished, length, weight, species and sex of catfish caught or taken and other biological data. A negative entry record is required for fishing trips in which no fish were caught or taken. These records will be kept on a form furnished by the department and are subject to inspection by an authorized agent of the department at any reasonable time. **Within ten (10) days following the close of the season, hand fishers shall submit the complete season record to the department.** Failure to submit an accurate and complete [annual report] **season record** shall be sufficient cause for the department to deny renewal of the permit for the following year.

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. Original rule filed Dec. 21, 2004, effective Jan. 15, 2005. Amended: Filed Sept. 14, 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 10-6.515 Crappie. The commission proposes to amend subsection (4)(A).

PURPOSE: This amendment establishes a nine inch (9") minimum length limit on crappie at Wappapello Lake.

(4) Length Limits: No length limits, except:

(A) All crappie less than nine inches (9") in total length must be returned to the water unharmed immediately after being caught from Lake of the Ozarks, Pomme de Terre Lake, Smithville Lake, [and] Truman Lake **and Wappapello Lake.**

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. Original rule filed June 13, 1994, effective Jan. 1, 1995. Amended: Filed May 30, 1995, effective Jan. 1, 1996. Amended: Filed Sept. 14, 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—Sport Fishing: Seasons, Methods Limits

PROPOSED AMENDMENT

3 CSR 10-6.545 White Bass, Yellow Bass, Striped Bass. The commission proposes to amend subsections (1)(A) and (4)(A).

PURPOSE: This amendment establishes a daily limit and length limit for white, yellow and striped bass at Long Branch Lake.

(1) Daily Limit: Fifteen (15) white bass, yellow bass, striped bass and their hybrids in the aggregate, except:

(A) On Thomas Hill [Lake] and Long Branch lakes where the daily limit is four (4) in the aggregate.

(4) Length Limits: No length limits, except the daily limit of white bass, yellow bass, striped bass and their hybrids may include not more than four (4) fish more than eighteen inches (18") in total length.

(A) On Thomas Hill [Lake] and Long Branch lakes, all white bass, yellow bass, striped bass and their hybrids less than twenty inches (20") in total length must be returned to the water unharmed immediately after being caught.

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 Sept. 14, 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 10-6.605 Live Bait. The commission proposes to amend section (4) and add a new section (6).

PURPOSE: This amendment eliminates length limits for non-native carp species within the live bait rule and make it illegal to transport live bait taken from public waters across state lines.

(4) Length Limits: All bluegill, green sunfish and bullheads more than five inches (5") in total length and other fish more than twelve inches (12") in total length must be returned to the water immediately after being caught by the methods prescribed in this rule, **except there are no length limits for bighead carp, common carp, goldfish, grass carp and silver carp.**

(6) Live bait, as defined in this code, obtained from waters of the state, may not be transported from the state or sold.

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. Original rule filed June 13, 1994, effective Jan. 1, 1995. Amended: Filed May 30, 1995, effective Jan. 1, 1996. Amended: Filed April 25, 1996, effective March 1, 1997. Amended: Filed May 9, 2002, effective March 1, 2003. Amended: Filed Sept. 29, 2004, effective April 28, 2005. Amended: Filed Sept. 14, 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 10-7.405 General Provisions. The commission proposes to amend section (5).

PURPOSE: This amendment provides clarification related to landowner and lessee privileges.

(5) Wildlife, except raccoons or other furbearing animals when treed with the aid of dogs, may not be searched for, spotlighted, located, harassed or disturbed in any manner with the aid of an artificial light, headlight or spotlight from any roadway, whether public or private, or in any field, woodland or forest, by any person acting either singly or as one of a group of persons. This [rule] section shall not apply to the use of a light by a landowner or lessee as defined by this Code on property under his/her control.

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. Original rule filed Aug. 26, 1964, effective Dec. 31, 1964. For intervening history, please consult the Code of State Regulations. Amended: Filed Sept. 14, 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 10-7.430 Pheasants: Seasons, Limits. The commission proposes to amend section (2).

PURPOSE: This amendment makes consistent the prescribed season dates that male pheasants may be taken.

(2) Male pheasants *[only]* may be taken from December 1 through December 12 in Dunklin, New Madrid, Pemiscot and Stoddard counties. Daily limit: one (1) male pheasant; possession limit: one (1) male pheasant.

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. Original rule filed Sept. 25, 1974, effective Dec. 31, 1974. For intervening history, please consult the Code of State Regulations. Amended: Filed Sept. 14, 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 10-7.445 Bullfrogs: Seasons, Methods, Limits. The commission proposes to amend provisions of this rule.

PURPOSE: This amendment allows frogs to be possessed throughout the year while maintaining the possession of only the daily limit of frogs on waters and banks thereof where daily limits apply; and allows .22 or smaller caliber rimfire rifles or pistols to be used.

Bullfrogs and green frogs may be taken/ *possessed and transported*/ from sunset, June 30 through October 31, by the holder of a hunting permit *[by means of]* with a .22 caliber **or smaller** rimfire rifle or pistol, *[or by]* pellet gun, longbow, crossbow, **or by** hand or handnet. An artificial light may be used. Daily limit: eight (8) frogs in the aggregate; possession limit: sixteen (16) frogs in the aggregate. Only the daily limit of frogs may be possessed upon the waters and banks thereof where daily limits apply.

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. Original rule filed Aug. 18, 1971, effective Dec. 31, 1971. For intervening history, please consult the Code of State Regulations. Amended: Filed Sept. 14, 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 8—Wildlife Code: Trapping: Seasons, Methods**

PROPOSED AMENDMENT

3 CSR 10-8.505 Trapping. The commission proposes to amend provisions of this rule.

PURPOSE: This amendment clarifies provisions for selling furbearer pelts and standardizes provisions with furbearer hunting regulations.

Any person, to exercise the privilege of trapping, shall obtain and have on his/her person the prescribed permit or temporary permit authorization number(s), unless exempt under provisions of 3 CSR 10-5.205. The temporary permit authorization number(s) and picture identification must be carried at all times while trapping until the actual permit(s) is received. **Furbearers may be purchased and sold only under provisions of Chapter 10, 3 CSR 10-4.135, and this rule.** No person shall accept payment for furbearers taken by another. Furbearers may not be held alive under trapping permits, except as provided in 3 CSR 10-8.515(7).

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. Original rule filed Aug. 16, 1973, effective Dec. 31, 1973. For intervening history, please consult the Code of State Regulations. Amended: Filed Sept. 14, 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 8—Wildlife Code: Trapping: Seasons, Methods**

PROPOSED AMENDMENT

3 CSR 10-8.510 Use of Traps. The commission proposes to amend sections (1), (2) and (3) of this rule.

PURPOSE: This amendment prohibits persons other than the user from killing or removing wildlife held in traps, snares or cable restraint devices and standardizes the language used throughout Chapter 8.

(1) Traps shall have smooth or rubber jaws only, and may include foot-hold traps, *[killing-type (Conibear-type)]* **Conibear or other killing-type** traps, foot-enclosing-type traps, cage-type traps, colony traps with openings no greater than six inches (6") in height and six inches (6") wide, or snares (as defined in 3 CSR 10-20.805) set under water only, and cable restraint devices (as defined in 3 CSR 10-20.805), but only with the prescribed permit. Use of pitfalls, deadfalls, snares set in a dry land set, and nets are prohibited.

(2) Traps, snares and cable restraint devices shall be plainly labeled, on durable material, with the user's full name and address. *[Killer (Conibear-type)] Wildlife held in traps, snares or cable restraint devices may be killed or removed only by the user.* Conibear or other killing-type traps set under water and colony traps set under water shall be attended and wildlife removed at least once every forty-eight (48) hours. All other traps, snares and cable restraint devices must be attended daily and wildlife removed or released. Traps may not be set in paths made or used by persons or domestic animals and Conibear[-type] or other killing-type traps may not be set along public roadways, except under water in permanent waters. Except as provided in 3 CSR 10-4.130, only cage-type traps or foot-enclosing-type traps may be set within one hundred fifty feet (150') of any resident or occupied building located within the established boundaries of cities or towns containing ten thousand (10,000) or more inhabitants. Homes, dens or nests of furbearers shall not be molested or destroyed. Traps may be used in conjunction with electronic calls.

(3) Use of Conibear[-Type] or Other Killing-Type Traps:

(A) No Conibear[-type trap] or other killing-type traps with a jaw spread greater than five inches (5") shall be used in any dry land set.

(B) Conibear[-type] or other killing-type traps with a jaw spread not greater than eight inches (8") may be set six feet (6') or more above ground level in buildings.

(C) Conibear[-type] or other killing-type traps of any size may be set under water.

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. Original rule filed Sept. 20, 1957, effective Dec. 31, 1957. For intervening history, please consult the Code of State Regulations. Amended: Filed Sept. 14, 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 10-9.105 General Provisions. The commission proposes to amend provisions of this rule.

PURPOSE: This amendment adds a new section (2) which provides an Approved Confined Wildlife Species List. Only species which are listed may be held under permit within the provisions of this chapter.

(1) Any person holding wildlife in captivity in any manner shall have in his/her possession the prescribed permit or evidence of exemption. Renewal of permits is conditioned on compliance with provisions of this Code.

(2) **Confined wildlife held under permit within the provisions of this Chapter shall include only those species listed on the following Approved Confined Wildlife Species List:**

Approved Confined Wildlife Species List

Species Code No.	Common Name	Scientific Name
Class I Wildlife Breeders		
Game Birds		
	Grouse, Blue	<i>Dendragapus obscurus</i>
	Grouse, Greater Sage-	<i>Centrocercus urophasianus</i>
	Grouse, Gunnison Sage-	<i>Centrocercus minimus</i>
	Grouse, Ruffed	<i>Bonasa umbellus</i>
	Grouse, Sharp-tailed	<i>Tympanuchus phasianellus</i>
	Grouse, Spruce	<i>Falciennis canadensis</i>
	Partridge, Gray	<i>Perdix perdix</i>
	Pheasant, Ring-necked (all subspecies)	<i>Phasianus colchicus</i>
	Ptarmigan, Rock	<i>Lagopus mutus</i>
	Ptarmigan, White-tailed	<i>Lagopus leucurus</i>
	Ptarmigan, Willow	<i>Lagopus lagopus</i>
	Quail, Bobwhite (all subspecies)	<i>Cotinus virginianus</i>
	Quail, California	<i>Callipepla californica</i>
	Quail, Gamble's	<i>Callipepla gambelii</i>
	Quail, Mountain	<i>Oreortyx pictus</i>
	Quail, Scaled	<i>Callipepla squamata</i>
	Turkey, Wild (all subspecies)	<i>Melagris gallopava</i>
Mammals		
	Armadillo, Nine-banded	<i>Dasypus novemcinctus</i>
	Badger	<i>Taxidea taxus</i>
	Beaver	<i>Castor canadensis</i>
	Bobcat	<i>Lynx rufus</i>
	Chipmunk, Eastern	<i>Tamias striatus</i>
	Coyote	<i>Canis latrans</i>
	Deer, Mule	<i>Odocoileus hemionus</i>
	Deer, White-tailed	<i>Odocoileus virginianus</i>
	Fox, Gray	<i>Urocyon cinereoargenteus</i>
	Fox, Red	<i>Vulpes vulpes</i>
	Groundhog (Woodchuck)	<i>Marmota monax</i>
	Mink	<i>Mustela vison</i>
	Muskrat	<i>Ondatra zibethicus</i>
	Opossum	<i>Didelphis virginiana</i>
	Otter, River	<i>Lontra canadensis</i>
	Rabbit, Eastern Cottontail	<i>Sylvilagus floridanus</i>
	Rabbit, Swamp	<i>Sylvilagus aquaticus</i>
	Raccoon	<i>Procyon lotor</i>
	Squirrel, Eastern Gray	<i>Sciurus carolinensis</i>
	Squirrel, Fox	<i>Sciurus niger</i>
	Squirrel, Franklin's Ground	<i>Spermophilus franklinii</i>
	Squirrel, Thirteen-lined Ground	<i>Spermophilus tridecemlineatus</i>
	Squirrel, Southern Flying	<i>Glaucomys volans</i>
	Weasel, Least	<i>Mustela nivalis</i>
	Weasel, Long-tailed	<i>Mustela frenata</i>
Amphibians		
Salamanders		
	Newt, Central	<i>Notophthalmus viridescens</i>
	Salamander, Tiger	<i>Ambystoma tigrinum</i>
Frogs and Toads		
	Bullfrog	<i>Rana catesbeiana</i>
	Frog, Green (Bronze)	<i>Rana clamitans</i>
	Frog, Southern Leopard	<i>Rana sphenoccephala</i>
	Toad, American	<i>Bufo americanus</i>
	Treefrog, Eastern (Cope's) Gray	<i>Hyla versicolor/chrysozelis</i>
	Treefrog, Green	<i>Hyla cinerea</i>
Reptiles		
Turtles		
	Cooter, River	<i>Pseudemys concinna</i>
	Slider, Red-eared	<i>Trachemys scripta elegans</i>
	Softshell, Smooth	<i>Apalone mutica</i>
	Softshell, Spiny	<i>Apalone spinifera</i>
	Turtle, Ornate Box	<i>Terrapene ornate</i>

Species Code No.	Common Name	Scientific Name
	Turtle, Alligator Snapping	<i>Macrochelys temminckii</i>
	Turtle, Common Map	<i>Graptemys geographica</i>
	Turtle, Common Musk (Stinkpot)	<i>Sternotherus odoratus</i>
	Turtle, Common Snapping	<i>Chelydra serpentina</i>
	Turtle, Mississippi Mud	<i>Kinosternon subrubrum</i>
	Turtle, Southern Painted	<i>Chrysemys picta dorsalis</i>
	Turtle, Three-toed Box	<i>Terrapene carolina triunguis</i>
	Turtle, Western Painted	<i>Chrysemys picta belli</i>
Lizards		
	Lizard, Eastern Collared	<i>Crotaphytus collaris</i>
	Lizard, Prairie (Fence)	<i>Sceloporus consobrinus (undulates)</i>
	Lizard, Slender Glass	<i>Ophisaurus attenuatus</i>
	Lizard, Texas Horned	<i>Phrynosoma cornutum</i>
Snakes	Skink, Five-lined	<i>Eumeces fasciatus</i>
	Bullsnake	<i>Pituophis catenifer sayi</i>
	Kingsnake, Prairie	<i>Lampropeltis calligaster</i>
	Kingsnake, Speckled	<i>Lampropeltis getula holbrooki</i>
	Snake, Black Rat	<i>Elaphe obsoleta obsoleta</i>
	Snake, Eastern Garter	<i>Thamnophis sirtalis sirtalis</i>
	Snake, Eastern Hog-nosed	<i>Heterodon platirhinus</i>
	Snake, Great Plains Rat	<i>Elaphe guttata emoryi</i>
	Snake, Red Milk	<i>Lampropeltis triangulum sypila</i>
	Snake, Red-sided Garter	<i>Thamnophis sirtalis parietalis</i>
	Snake, Western Hog-nosed (Dusty and Plains)	<i>Heterodon nasicus</i>
Class II Wildlife Breeders		
	Bear, Black (& hybrids)	<i>Ursus americanus</i>
	Copperhead	<i>Agkistrodon contortrix</i>
	Cottonmouth	<i>Agkistrodon piscivorus</i>
	Lion, Mountain (& hybrids)	<i>Puma concolor</i>
	Rattlesnake, Pygmy	<i>Sistrurus miliarius</i>
	Rattlesnake, Timber (Canebrake)	<i>Crotalus horridus</i>
	Wolf, Gray (& hybrids)	<i>Canis lupus</i>
Game Bird Hunting Preserves		
	Partridges, Exotic (all species)	All species
	Pheasants (all species)	All species
	Quail (all species)	All species
Big Game Hunting Preserves		
	Antelope, Pronghorn	<i>Antilocapra americana</i>
	Boar, Wild (including feral hogs, razorback hogs, European boars and other pig species)	
	Caribou (Reindeer)	<i>Rangifer tarandus</i>
	Deer, Fallow	<i>Dama dama</i>
	Deer, Mule	<i>Odocoileus hemionus</i>
	Deer, Red	<i>Cervus species</i>
	Deer, Sika	<i>Cervus nippon</i>
	Deer, White-tailed	<i>Odocoileus virginianus</i>
	Elk	<i>Cervus elaphus</i>
	Goat, Mountain	<i>Oreamnos americanus</i>
	Moose	<i>Alces alces</i>
	Sheep, Bighorn	<i>Ovis canadensis</i>
	Sheep, Dall	<i>Ovis dalli</i>
	Ungulates (other species)	deer, antelope deer, goats, sheep, etc.
Wildlife Hobby		
	Badger	<i>Taxidea taxus</i>
	Beaver	<i>Castor canadensis</i>
	Bobcat	<i>Lynx rufus</i>
	Coyote	<i>Canis latrans</i>
	Fox, Gray	<i>Urocyon cinereoargenteus</i>
	Fox, Red	<i>Vulpes vulpes</i>
	Groundhog (Woodchuck)	<i>Marmota monax</i>
	Mink	<i>Mustela vison</i>
	Muskrat	<i>Ondatra zibethicus</i>
	Opossum	<i>Didelphis virginiana</i>
	Otter, River	<i>Lontra canadensis</i>

Species Code No.	Common Name	Scientific Name
	Pheasant, Ring-necked (all subspecies)	<i>Phasianus colchicus</i>
	Quail, Bobwhite (all subspecies)	<i>Colinus virginianus</i>
	Rabbit, Eastern Cottontail	<i>Sylvilagus floridanus</i>
	Rabbit, Swamp	<i>Sylvilagus aquaticus</i>
	Raccoon	<i>Procyon lotor</i>
	Squirrel, Eastern Gray	<i>Sciurus carolinensis</i>
	Squirrel, Fox	<i>Sciurus niger</i>
	Weasel, Least	<i>Mustela nivalis</i>
	Weasel, Long-tailed	<i>Mustela frenata</i>
Wildlife Collector's Permit	Species and numbers of each are limited to those specified on the permit	
Resident Falconry Permit	Birds of prey as permitted under 3 CSR 10-9.422.	
Hound Running Area Operator and Dealer Permit		
	Coyote	<i>Canis latrans</i>
	Fox, Gray	<i>Urocyon cinereoargenteus</i>
	Fox, Red	<i>Vulpes vulpes</i>
Field Trial Permit		
	Chukars	<i>Alectoris graeca</i>
	Ducks, Mallard	<i>Anas platyrhynchos</i>
	Pheasants (all species)	
	Quail (all species)	
Dog Training Area Permit		
	Partridges, Exotic (all species)	
	Pheasants (all species)	
	Quail (all species)	

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. Original rule filed June 9, 1993, effective Jan. 1, 1994. Amended: Filed April 25, 1996, effective March 1, 1997. Amended: Filed Sept. 29, 2004, effective Feb. 28, 2005. Amended: Filed Sept. 14, 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 Provisions; Applications. The commission proposes to amend section (1) and subsections (3)(D) and (E).

PURPOSE: This amendment limits the collection and transportation of invertebrate species of concern to those who hold Wildlife Collector's Permits and adds conditions to holding facilities for potentially invasive crayfish and fish species to reduce the threat of escape to state waters.

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) Possession of Native Species.

(A) A maximum of five (5) specimens of any native wildlife not listed in 3 CSR 10-4.110(4) or 3 CSR 10-9.240, except endangered species, bats, hellbenders, and alligator snapping turtles, may be taken and possessed alive by a resident of Missouri without permit, but these animals shall not be bought or sold. Bones, skins, shells and other parts of such wildlife may be possessed for personal use without permit, but these wildlife parts in any form shall not be bought or sold. **Wildlife held under this subsection may not be transported (or shipped) from the state.**

(B) Native invertebrates listed in the January 2005 edition of the Missouri Species and Communities of Conservation Concern Checklist may only be collected and held by holders of a Wildlife Collector's Permit and only as prescribed in 3 CSR 10-9.425. The Checklist is adopted as a part of this Code and by this reference is herein incorporated. A printed copy of this booklet can be obtained from the Missouri Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180 and is online at www.missouriconservation.org. This rule does not incorporate any subsequent amendments or additions to the Checklist.

(3) Fish, tiger salamander larvae and crayfish may be bought, sold, transported, propagated, taken and possessed by any person without permit throughout the year in any number or size and by any method providing—

(D) That the privileges of this section do not apply to taking or possession in, on or from waters of the state, waters stocked by the state, or waters subject to movements of fishes into and from waters of the state, except:

1. Animals defined as live bait and possessed under provisions of this section may be possessed on the waters of the state for use as live bait.

2. Fish cultured by a commercial fish producer that remain in a man-made impoundment following inundation by flooding from waters of the state as defined in this Code shall be considered the property of the impoundment owner; provided the remaining fish species are the same as were present in the impoundment prior to inundation. Any other fish species in the impoundment shall be considered the property of the state and not available for sale, and shall be returned unharmed immediately to the waters of the state when harvested.

3. With the written authorization of the director, a privately/-owned impoundment that 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, and that is designated as waters of the state, may be used for

the commercial production of species listed in the Approved Aquatic Species List in 3 CSR 10-9.110(3)(F) that were not stocked by the department, provided that:

A. The impoundment owner has in his/her possession a dated, written statement showing the number or weight of each species stocked as proof that such animals were legally obtained from other than waters of the state or from a licensed commercial fisherman.

B. The species being produced may be harvested by the methods and under the conditions specified in the director's written authorization. All other species caught during culture activities must be returned unharmed immediately to the water.

C. Statewide seasons, methods and limits apply for all other species.

(E) That the privileges of this section apply only to the following:

1. Species listed in the Approved Aquatic Species List (excluding transgenic organisms, but including all subspecies, varieties and hybrids of the same bought, sold, transported, propagated, taken and possessed for purposes of aquaculture).

2. Species frozen or processed for sale as food products.

3. Species incapable of surviving in fresh water.

4. [Species] Fish held only in aquaria, tanks or other containers having water discharged only into septic systems or municipal waste treatment facilities that are designed and operated according to guidelines of the Missouri Department of Natural Resources or that entirely recirculate all of the water so that none of it shall drain into a water body.

5. Species other than fish held only in aquaria, tanks or other containers that have the following specifications: all containers including the drain pipe or stand pipe must be completely covered with an intact screen of a maximum mesh size of 1/16 inch square, and having water discharged only into septic systems or municipal waste treatment facilities that are designed and operated according to guidelines of the Missouri Department of Natural Resources or that entirely recirculate all of the water so that none of it shall drain into a water body.

[5.]6. Species held only in a closed system from which escape of live organisms (including eggs, parasites and diseases) is not possible. The species to be held and the system to be used must receive prior written approval from the director.

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 Sept. 14, 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 10-9.220 Wildlife Confinement Standards. The commission proposes to amend section (7) and add a new section (8).

PURPOSE: This amendment provides an exception for Class I and II breeder permits for facilities that are inspected and subsequently accredited through the American Zoo and Aquarium Association (AZA) and more clearly states the intent of the rule which allows the director to authorize other acceptable variations from wildlife confinement standards in specific instances.

(7) Requirements of this rule shall not apply to wildlife under the care of a veterinarian or rehabilitation center, or to animals legally held in circuses, publicly[-] owned zoos, **American Zoo and Aquarium Association (AZA) accredited not-for-profit facilities**, bona fide research facilities or on fur farms whose sole purposes are to sell pelts or live animals to other fur farms and whose facilities meet generally accepted fur farming industry standards and adhere to provisions of sections (1), (3), and (5) of this rule. *[Variations from requirements of this rule shall be only as specifically authorized by the director.]*

(8) Other variations from requirements of this rule shall be only as specifically authorized by the director.

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. This rule was previously filed as 3 CSR 10-3.020. Original rule filed Nov. 2, 1984, effective Feb. 11, 1985. For intervening history, please consult the Code of State Regulations. Amended: Filed Sept. 14, 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 10-9.353 Privileges of Class I and Class II Wildlife Breeders. The commission proposes to amend sections (8) and (17).

PURPOSE: This amendment provides an exception for Class I and II breeder permits for facilities that are inspected and subsequently accredited through the American Zoo and Aquarium Association (AZA) and requires the holder of a Class I wildlife breeder permit to report escaped animals immediately to an agent of the department.

(8) No Class I or Class II wildlife breeder permit is required for wildlife legally held by circuses, publicly[-] owned zoos, **American Zoo and Aquarium Association (AZA) accredited not-for-profit facilities** or bona fide research facilities; however, those wildlife may not be held for personal use. Physical contact between humans and Class I and Class II wildlife in circuses must be restricted to the handlers, performers or other circus employees.

(17) The holder of a **Class I or Class II** wildlife breeder permit shall report escaped animals immediately to an agent of the department.

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. This rule was previously filed as 3 CSR 10-10.755. Original rule filed Aug. 18, 1970, effective Dec. 31, 1970. For intervening history, please consult the Code of State Regulations. Amended: Filed Sept. 14, 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 10-9.565 Licensed Hunting Preserve: Privileges. The commission proposes to amend paragraphs (1)(A)5. and (1)(B)8.

PURPOSE: This amendment will allow Game Bird Hunting Preserve operators to sell live game birds without also possessing a Class I Wildlife Breeder Permit, under privileges of 3 CSR 10-9.353 and require operators of Big Game Hunting Preserves to report escaped animals immediately to an agent of the department.

(1) Licensed hunting preserves are subject to inspection by an agent of the department at any reasonable time. Animal health standards and movement activities shall comply with all state and federal regulations. Any person holding a licensed hunting preserve permit may release on his/her licensed hunting preserve legally acquired pheasants, exotic partridges, quail and ungulates (hoofed animals) for shooting throughout the year, under the following conditions:

(A) Game Bird Hunting Preserve.

1. The game bird hunting preserve shall be a single body of land not less than one hundred sixty (160) acres and no more than six hundred forty (640) acres in size. Game bird hunting preserves may be dissected by public roads, and shall be posted with signs specified by the department. Hunting preserve permits will not be issued for areas[-]:

A. Within five (5) miles of any area where there is an ongoing department game bird release program or where the most recent release of department game birds has been made less than five (5) years prior to receipt of the application.

B. In any location where those activities are considered by the department as likely to further jeopardize any species currently designated by Missouri or federal regulations as threatened or endangered wildlife.

2. Any person taking or hunting game birds on a licensed hunting preserve shall have in his/her possession a valid hunting small game permit or licensed hunting preserve hunting permit, except that persons fifteen (15) years of age or younger, when accompanied by a properly licensed adult hunter, and residents sixty-five (65) years of age and older, may hunt without permit. Licensed hunting preserve hunting permits may be issued to persons without requiring display of a hunter education certificate card for use on game bird hunting preserves; provided s/he is hunting in the immediate presence of

a properly licensed adult hunter who has in his/her possession a valid hunter education certificate card.

3. Game birds taken on a hunting preserve may be possessed and transported from the preserve only when accompanied by a receipt listing the date, number and species taken, and name of the hunting preserve; or when accompanied by an approved transportation sticker for each game bird taken. Transportation stickers must be purchased from the department by the hunting preserve permittee. Game birds may be taken in any numbers on these preserves.

4. The permittee must release during the shooting season at least one (1) game bird per acre of hunting preserve, with at least one-half (1/2) of the birds to be bobwhite quail, if quail are to be hunted outside the statewide season. All birds shall be from a source approved by the department.

5. **The permittee may exercise privileges provided in 3 CSR 10-9.353 for game birds held under this permit in propagation facilities within or directly adjacent to the game bird hunting preserve. Propagation facilities may be separated from the hunting preserve by a public road, but must be directly adjacent.** Any such propagation facilities [contained within or adjacent to the game bird hunting preserve] shall meet standards specified in 3 CSR 10-9.220. [Breeding enclosures] Other propagation facilities not contained within or directly adjacent to the hunting preserve are not covered under the privileges of this rule.

(B) Big Game Hunting Preserve.

1. The big game hunting preserve for ungulates shall be a fenced single body of land, not dissected by public roads, and not less than three hundred twenty (320) acres and no more than three thousand two hundred (3,200) acres in size. The hunting preserve shall be fenced so as to enclose and contain all released game and exclude all hoofed wildlife of the state from becoming a part of the enterprise and posted with signs specified by the department. Fence height shall meet standards specified in 3 CSR 10-9.220.

2. All elk, elk-hybrids, mule deer, and white-tailed deer introduced into a big game hunting preserve shall meet the following requirements:

A. Animals shall be tagged or marked in a method allowing each individual animal to be uniquely identified.

B. Animals imported into Missouri must come from a herd that is enrolled and has achieved a status two [(2)] or higher in a United States Department of Agriculture approved or state-sponsored chronic wasting disease monitoring program—two (2) years of surveillance, advancement, and successful completion of program requirements.

C. Animals from within Missouri must come from a herd comprised of animals enrolled in a United States Department of Agriculture approved or state-sponsored chronic wasting disease monitoring program.

3. Effective January 1 of each year, one hundred percent (100%) of all elk, elk-hybrids, mule deer, and white-tailed deer over twelve (12) months of age that die of any cause within a big game hunting preserve operation, shall be tested for chronic wasting disease at a federally approved laboratory, up to an annual total of ten (10) animals in the aggregate, except:

A. No testing is required for big game hunting preserve operations that have not introduced, during the past three (3) years, any elk, elk-hybrids, mule deer or white-tailed deer from a herd having a status less than three [(3)] as documented through a United States Department of Agriculture approved or state-sponsored chronic wasting disease monitoring program—three (3) years of surveillance, advancement, and successful completion of program requirements.

B. No testing is required for elk, elk-hybrids, mule deer, and white-tailed deer documented through Missouri's chronic wasting disease monitoring program as from a status five [(5)] herd—five (5) years of surveillance, advancement, and successful completion of program requirements.

C. One hundred percent (100%) of all elk, elk-hybrids, mule deer and white-tailed deer that are imported into Missouri that are

from a herd having a status less than three [(3)] as documented through a United States Department of Agriculture or state-sponsored chronic wasting disease monitoring program that die of any cause within a big game hunting preserve shall be tested for chronic wasting disease at a federally approved laboratory.

4. All permits issued by the state veterinarian's office allowing cervids to enter Missouri and all chronic wasting disease test results must be kept by the permittee and are subject to inspection by an agent of the department at any reasonable time. All test results documenting a positive case of chronic wasting disease shall be reported immediately to an agent of the department.

5. The permittee may exercise privileges provided in 3 CSR 10-9.353 only for species held within breeding enclosure(s) contained within or directly adjacent to the big game hunting preserve. Any such breeding enclosure(s) shall meet standards specified in 3 CSR 10-9.220. Breeding enclosures may be separated from the hunting preserve by a public road, but must be directly adjacent. Other breeding enclosures not contained within or directly adjacent to the hunting preserve are not covered under the privileges of this rule.

6. Any person taking or hunting ungulates on a big game hunting preserve shall have in his/her possession a valid licensed hunting preserve hunting permit. The permittee shall attach to the leg of each ungulate taken on the hunting preserve a locking leg seal furnished by the department, for which the permittee shall pay ten dollars (\$10) per one hundred (100) seals. Any packaged or processed meat shall be labeled with the licensed hunting preserve permit number.

7. Animal health standards and movement activities shall comply with all state and federal regulations.

8. **Big game hunting preserve permittees shall report escaped animals immediately to an agent of the department.**

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. This rule previously filed as 3 CSR 10-10.765. Original rule filed Jan. 19, 1972, effective Feb. 1, 1972. For intervening history, please consult the Code of State Regulations. Amended: Filed Sept. 14, 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 10-10.722 [Missouri River] Resident Shovelnose Sturgeon Commercial Harvest Permit. The commission proposes to amend provisions of this rule.

PURPOSE: This amendment renames this permit and adds the Mississippi River to the list of waters where shovelnose sturgeon may be commercially harvested by residents of Missouri.

Required in addition to the Commercial Fishing Permit to take shovelnose sturgeon from the Missouri [River] and Mississippi rivers in

accordance with 3 CSR 10-10.725. This permit is available only to residents of the state. Fee: Five hundred dollars (\$500).

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. Original rule filed Dec. 30, 2003, effective July 1, 2004. Amended: Filed Sept. 14, 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 RULE

3 CSR 10-10.724 Nonresident Mississippi River Shovelnose Sturgeon Commercial Harvest Permit

PURPOSE: This rule establishes a special permit required in addition to the Commercial Fishing Permit for nonresidents of the state to harvest shovelnose sturgeon from the Mississippi River.

Required in addition to the Commercial Fishing Permit to take shovelnose sturgeon from the Mississippi River in accordance with 3 CSR 10-10.725. This permit is available only to nonresidents of the state. Fee: Five hundred dollars (\$500).

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. Original rule filed Sept. 14, 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 two thousand five hundred dollars (\$2,500) based on five (5) nonresident fishermen purchasing the permit. Total fiscal impact for the five (5)-year aggregate is twelve thousand five hundred dollars (\$12,500).

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.

**FISCAL NOTE
PRIVATE ENTITY COST**

I. RULE NUMBER

Title: 3 - Department of Conservation
Division: 10 Conservation Commission
Chapter: 10 Commercial Permits: Seasons, Methods, Limits
Type of Rulemaking: Proposed Rule
Rule Number and Name: 3 CSR 10-10.724 Nonresident Mississippi River Shovelnose Sturgeon Commercial Harvest Permit

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:
5 Nonresident commercial fishers		\$12,500

III. WORKSHEET

An estimated 5 nonresident commercial fishers will buy this permit to be allowed to take shovelnose sturgeon in the Mississippi by commercial methods. Total cost over the 5 year life is calculated as 5 permit buyers X \$500 per permit year X 5 years.

IV. ASSUMPTIONS

The estimated number of permit buyers above is based on the past history of nonresidents who buy commercial fishing permits. This number has varied between 3 and 7 permits per year issued over the past 5 years.

Based on an average five-year life cost. All permit fees are reviewed annually and adjustments made as needed—normally within five years—to remain competitive with other states.

**Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 10—Wildlife Code: Commercial Permits:
Seasons, Methods, Limits**

PROPOSED AMENDMENT

3 CSR 10-10.725 Commercial Fishing: Seasons, Methods. The commission proposes to amend sections (1), (5), (7) and (10), to add a new section (8) and renumber the remaining sections.

PURPOSE: This amendment establishes restrictions on the commercial harvest of shovelnose sturgeon in the Mississippi River, provides specifications for hoop net wings and leads, clarifies that commercial gear must be labeled while in use with tags furnished by the department, and corrects a referenced section.

(1) Commercial fish, and live bait for personal use, may be taken in any numbers by the holder of a commercial fishing permit from commercial waters with seines, gill nets, trammel nets, hoop nets with or without wings, trotlines, throwlines, limb lines, bank lines or jug or block lines and any number of hooks, except:

(C) **On portions of the Mississippi River defined as commercial waters where shovelnose sturgeon twenty-four inches (24") to thirty-two inches (32") in length (measured from tip of snout to fork of tail) may be taken only from October 15 through May 15 and only by holders of a Resident Shovelnose Sturgeon Commercial Harvest Permit or Nonresident Mississippi River Shovelnose Sturgeon Commercial Harvest Permit.**

(5) From November 1 through May 15 on the Missouri River downstream from U.S. Highway 169 to Carl R. Noren Access and downstream from Chamois Access to its confluence with the Mississippi River or banks thereof, the following may not be possessed or transported while fishing by commercial methods or while possessing commercial fishing gear and shall be returned to the water unharmed immediately after being caught:

(B) Shovelnose sturgeon less than twenty-four inches (24") [and] or more than thirty inches (30") in length (measured from tip of snout to fork of tail).

(7) [On] **From May 16 through October 14 on the [Mississippi River, except in Sand Chute below the mouth of Salt River in Pike County, and also on waters which exist temporarily through overflow from the Mississippi River east of the Missouri Pacific Railroad between Cape Girardeau and Scott City and east of the Mississippi River mainline and setback levees between Commerce and the Arkansas state line] portions of the Mississippi River defined as commercial waters,** the following may not be possessed or transported while fishing by commercial methods or while possessing commercial fishing gear and shall be returned to the water unharmed immediately after being caught:

(C) Shovelnose sturgeon [more than thirty inches (30") in length (measured from tip of snout to fork of tail)].

(8) **From October 15 through May 15 on the portions of the Mississippi River defined as commercial waters, the following may not be possessed or transported while fishing by commercial methods or while possessing commercial fishing gear and shall be returned to the water unharmed immediately after being caught:**

(A) **Channel, blue and flathead catfish less than fifteen inches (15") in total length.**

(B) **Paddlefish less than twenty-four inches (24") in length (measured from eye to fork of tail).**

(C) **Shovelnose sturgeon less than twenty-four inches (24") or more than thirty-two inches (32") in length (measured from tip of snout to fork of tail).**

(D) **Other game fish.**

[[8]] (9) While on waters of the state and adjacent banks, the head and tail must remain attached to all fish, bowfin and shovelnose sturgeon must remain whole and intact, and the ovaries of paddlefish must remain intact and accompany the fish from which they were removed.

[[9]] (10) Commercial fishing gear may not be used or set within three hundred (300) yards of any spillway, lock, dam or the mouth of any tributary stream or ditch, or in waters existing temporarily through overflow outside the banks of the specified rivers except as provided in section [[1]] (7) of this rule, and may not be used to take fish underneath or through the ice. Seines, gill nets and trammel nets having a mesh smaller than two inches (2") bar measure, measured when wet, may not be used. Hoop nets, [and] including wings and leads, having a mesh smaller than one and one-half inches (1 1/2") bar measure, measured when wet, may not be used. **Hoop net wings and leads must be a single panel and no more than six feet (6') in depth.** Hooks attached to trotlines or throwlines shall be staged not less than two feet (2') apart. [All] **While in use, all commercial fishing gear [used for commercial fishing]** shall be labeled with tags furnished by the department and placed as indicated on the tags. Portions of trotlines and jug or block lines, throwlines, bank lines and limb lines must have the commercial tag number under which they are being fished attached to each line. Commercial fishing gear may not be possessed on waters of the state or adjacent banks that are not open to commercial fishing, except during transportation by boat from the nearest access location to commercial fishing waters as determined by the department.

[[10]] (11) The possession of game fish while in the act of using commercial fishing gear or aboard a boat transporting fish taken by commercial fishing gear is prohibited.

[[11]] (12) The possession of extracted eggs of any fish species, except as provided in section (8) of this rule, is prohibited while on waters of the state and adjacent banks.

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. Original rule filed Aug. 16, 1973, effective Dec. 31, 1973. For intervening history, please consult the Code of State Regulations. Amended: Filed Sept. 14, 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 10-10.726 Reciprocal Privileges: Commercial Fishing and Musseling; Commercial Waters. The commission proposes to add section (6).

PURPOSE: This amendment recognizes reciprocal privileges for harvest of shovelnose sturgeon on the Mississippi River by properly licensed commercial fishers from Illinois and Tennessee.

(6) Any person possessing a valid commercial permit or license to harvest shovelnose sturgeon issued by the states of Illinois or Tennessee may harvest shovelnose sturgeon from the Missouri portion of the Mississippi River without further permit or license, as permitted by this Code.

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. Original rule filed March 14, 1973, effective March 24, 1973. For intervening history, please consult the *Code of State Regulations*. Amended: Filed Sept. 14, 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 10-10.782 Commercial Musseling, Seasons, Methods. The commission proposes to amend section (1).

PURPOSE: This amendment prohibits taking mussel species of conservation concern for commercial purposes.

(1) Mussels may be taken for commercial purposes from sunrise to sunset from April 1 through August 31, only by hand or brail. Brails must be less than twenty feet (20') in length and only three (3) brails per boat may be possessed. Mussels may not be possessed on waters open to commercial musseling during hours closed to harvest. Commercial musselers may possess mussels only from April 1 through September 15. All endangered species, **all species of conservation concern (as defined in 3 CSR 10-9.110) and all washboard mussels (*Megaloniaias nervosa*), regardless of size[,] ; [all washboard mussels (*Megaloniaias nervosa*),]** all three ridge mussels (*Amblyma plicata*) that can pass through a ring with an inside diameter of three inches (3")[,] ; all mapleleaf mussels (*Quadrula quadrula*) that can pass through a ring with an inside diameter of two and three-fourths inches (2 3/4"); and all other mussels that can pass through a ring with an inside diameter of two and one-half inches (2 1/2") must be returned unharmed immediately to the bed where taken. Mussels may be taken in any numbers by the holder of a commercial musseling permit from commercial waters. Mussels may not be taken or possessed in Pool 24 of the Mississippi River west of the navigation channel.

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. Original rule filed April 28, 1992, effective Feb. 26, 1993. For intervening history, please consult the *Code of State Regulations*. Amended: Filed Sept. 14, 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 10-11.110 General Provisions. The commission proposes to amend section (1), adds new sections (2) and (7) and renumber sections accordingly.

PURPOSE: This amendment clarifies that persons collecting or doing research on invertebrate species or plants on lands owned or managed by Missouri Department of Conservation (MDC) must obtain a Wildlife Collector's Permit or Letter of Authorization for Plant Collecting and prohibits guiding for pay on department areas.

(1) The following activities are allowed on department areas only where and as authorized by this chapter or by signs and area brochures or by a special use permit issued by the area manager: swimming, sailboarding, sailboating, skateboarding, boating, entry on areas closed to public use, bicycling, camping, shooting, hunting, fishing, trapping, *[collecting or possessing wild plants and wild animals and unprocessed parts thereof,]* removal of water, commercial use, vending, fires outside of designated camping areas, rock collecting, digging and other soil disturbance, field trials, horseback riding, ranging of horses and other livestock, possession of pets and hunting dogs, caving, rock climbing, rappelling, paintballing, scuba diving, water skiing, the use and possession of vehicles and aircraft, the use of decoys, and the use or construction of blinds and tree stands.

(2) Collecting or possessing wild plants and wild animals (including invertebrates) and unprocessed parts thereof must be authorized by a Letter of Authorization for Plant Collecting or a Wildlife Collector's Permit, respectively, except as otherwise authorized in this Code.

[[2]] (3) On Thomas Hill Reservoir, swimming, sailboarding, scuba diving and water skiing are permitted, except water skiing is prohibited north of Highway T on the Stinking Creek Arm of the lake and on the warm water arm of the lake upstream from the marker buoys.

[[3]] (4) The destruction, defacing or removal of department property and use of fireworks are prohibited.

[[4]] (5) Possession of glass food and beverage containers is prohibited within the Castor River Shut-Ins Natural Area on Amidon Memorial Conservation Area.

[[5]] (6) Waste containers may be used only for disposal of garbage, trash, refuse or rubbish generated on the department area.

(7) Guiding for pay is prohibited on department areas.

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 May 9, 2002, effective Oct. 30, 2002. Amended: Filed Sept. 14, 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 10-11.125 Field Trials. The commission proposes to amend subsection (1)(J).

PURPOSE: This amendment corrects the name of the Wayne Helton Memorial Wildlife Area.

(1) Field trials are only permitted on the department areas listed below. A field trial special use permit issued by the area manager is required. Unless otherwise provided on the field trial special use permit, field trials are permitted from September 1 through the Monday closest to March 31. Field trial types and locations may be further restricted on each designated area:

(J) *[Helton Conservation Area]* **The Wayne Helton Memorial Wildlife Area**

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. Original rule filed May 9, 2002, effective Oct. 30, 2002. Amended: Filed Sept. 29, 2004, effective Feb. 28, 2005. Amended: Filed Sept. 14, 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 10-11.180 Hunting, General Provisions and Seasons. The commission proposes to amend sections (4), (14) and (17), delete section (15) and renumber sections accordingly.

PURPOSE: This amendment removes Schnabel Woods as a Department of Conservation Area; establishes provisions for fall turkey and squirrel hunting on the fenced portion of Caney Mountain Conservation Area; provides additional hunting opportunity for rabbits and squirrels on the James A. Reed Memorial Wildlife Area.

(4) Hunting is prohibited on the following department areas except for deer hunting as authorized in the annual *Fall Deer and Turkey Hunting Regulations and Information* booklet:

[[IIII]] Schnabel Woods
[[JJJJ]] (IIII) F. O. and Leda J. Sears Memorial Wildlife Area
[[KKKK]] (JJJJ) Sedalia Conservation Service Center
[[LLLL]] (KKKK) Shawnee Mac Lakes Conservation Area
[[MMMM]] (LLLL) Shepherd of the Hills Fish Hatchery
[[NNNN]] (MMMM) Sims Valley Community Lake
[[OOOO]] (NNNN) Southeast Regional Office
[[PPPP]] (OOOO) Southwest Regional Office
[[QQQQ]] (PPPP) Springfield Conservation Nature Center
[[RRRR]] (QQQQ) Julian Steyermark Woods Conservation Area
[[SSSS]] (RRRR) Sullivan Office
[[TTTT]] (SSSS) Thirtyfour Corner Blue Hole
[[UUUU]] (TTTT) Tower Rock Natural Area
[[VVVV]] (UUUU) Tri-City Community Lake
[[WWWW]] (VVVV) Twin Borrow Pits Conservation Area
[[XXXX]] (WWWW) Tywappity Community Lake
[[YYYY]] (XXXX) Ulman Towersite
[[ZZZZ]] (YYYY) Upper Mississippi Conservation Area (Clarksville Refuge)
[[AAAA]] (ZZZZ) Vandalia Community Lake
[[BBBB]] (AAAA) Wah-Kon-Tah Prairie (portion south of Highway 82)
[[CCCC]] (BBBB) Wah-Sha-She Prairie
[[DDDD]] (CCCC) Walnut Woods Conservation Area
[[EEEE]] (DDDD) Warrenton Office
[[GGGG]] (EEEE) White Alloe Creek Conservation Area
[[HHHH]] (GGGG) Wildcat Glade Natural Area
[[IIII]] (HHHH) Walter Woods Conservation Area
[[JJJJ]] (IIII) Mark Youngdahl Urban Conservation Area

(14) On Caney Mountain Conservation Area (fenced portion), spring turkey hunting is permitted only by holders of a Spring Turkey Hunting Permit who have been selected to participate in the managed hunt. **Fall firearms turkey hunting is permitted under statewide regulations except during scheduled managed deer hunts. Squirrel hunting is permitted during the prescribed season except from September 1 through November 30.**

[[15]] On Caney Mountain Conservation Area (fenced portion), firearms squirrel hunting is prohibited from September 1 through November 30.]

[[16]] (15) On August A. Busch Memorial Conservation Area:

(A) Rabbits may be hunted only with shotgun from January 1 through February 15, except on designated portions where special management restrictions apply. The daily limit is four (4) rabbits.

(B) Doves may be hunted only from one-half (1/2) hour before sunrise to 1:00 p.m. during the statewide season.

(C) Squirrels and groundhogs may be hunted only with shotgun from the fourth Saturday in May through October 15.

(D) Furbearers may only be hunted from 6:00 p.m. to 6:00 a.m. from December 15 through the end of the prescribed furbearer season. Coyotes may be taken only by shotgun during daylight hours from the fourth Saturday in May through September 30 and from December 15 through March 31, except coyotes may be taken during

managed deer hunts by participants possessing a valid Managed Deer Hunting Permit and the prescribed hunting permit.

(E) Spring turkey hunting is permitted only by holders of a Spring Turkey Hunting Permit who have been selected to participate in the area's managed spring turkey hunt. Fall firearms turkey hunting is prohibited. Fall archery turkey hunting is permitted only by holders of an Archer's Hunting Permit who have been selected to participate in the area's archery managed deer hunt; turkeys may only be taken prior to taking a deer.

(F) Quail hunting is permitted only during managed quail hunts.

[[17]] (16) On James A. Reed Memorial Wildlife Area:

(A) Rabbits may be [hunted only from 8:00 a.m. to 4:30 p.m. daily] **taken between sunrise and sunset** from December 1 through the end of the statewide season by holders of a valid area daily hunting [tag] permit.

(B) Doves may be [hunted] **taken** only in assigned areas from assigned shooting stations from noon to sunset each Monday through Friday, except Labor Day, during the statewide season by holders of a valid area daily hunting [tag] permit.

(C) Squirrels may be [hunted only from 8:00 a.m. to 4:30 p.m. daily] **taken between sunrise and sunset** from December 1 through [December 31] **the end of the statewide season** by holders of a valid area daily hunting [tag] permit.

(D) Turkey, furbearer, and quail hunting are prohibited except during managed hunts.

[[18]] (17) On Bois D'Arc Conservation Area and White River Trace Conservation Area, quail and dove hunting are permitted only until 1:00 p.m. daily. During the first seven (7) days of dove season, doves may be taken in assigned areas only by holders of a valid area daily hunting tag. Quail may be taken only by holders of a valid area daily hunting tag until the area is posted closed based on harvest surveys.

[[19]] (18) On Lake Paho Conservation Area, doves may be hunted only from one-half (1/2) hour before sunrise to 1:00 p.m. during the statewide season.

[[20]] (19) On Eagle Bluffs Conservation Area, William R. Logan Conservation Area and William G. and Erma Parke White Memorial Wildlife Area, doves may be hunted only in assigned areas from an assigned shooting station on designated days from 1:00 p.m. to 5:00 p.m. during the September portion of statewide season by holders of a valid area daily hunting tag.

[[21]] (20) On Marais Temps Clair Conservation Area:

(A) Dove hunting is permitted only until 1:00 p.m. daily.

(B) Quail, rabbit, pheasant, woodcock, squirrel, groundhog, furbearer, turkey and crow hunting is prohibited.

(C) All hunters must possess a valid daily hunting tag.

[[22]] (21) On Robert E. Talbot Conservation Area, quail may be taken only by holders of a valid area daily hunting tag.

[[23]] (22) Quail hunting is permitted only until 1:00 p.m. daily from November 1 through December 15 on the following department areas:

- (A) Capps Creek Conservation Area
- (B) Reform Conservation Area
- (C) Dr. O. E. and Eloise Sloan Conservation Area
- (D) Robert E. Talbot Conservation Area
- (E) Whetstone Creek Conservation Area

[[24]] (23) On Columbia Bottom Conservation Area and Saint Stanislaus Conservation Area, hunting is permitted only during managed hunts or by holders of a valid area daily hunting tag.

[[25]] (24) On Lake Girardeau Conservation Area, hunting is permitted only from November 1 through April 1.

[[26]] (25) On Settle's Ford Conservation Area, hunting of wildlife other than waterfowl is prohibited in designated waterfowl hunting areas from October 15 through the end of the prescribed Canada goose season.

[[27]] (26) Hunting of wildlife other than waterfowl is prohibited, except in designated areas, from October 15 through the prescribed waterfowl season on the following department areas:

- (A) Bob Brown Conservation Area
- (B) Columbia Bottom Conservation Area
- (C) Coon Island Conservation Area
- (D) Duck Creek Conservation Area
- (E) Eagle Bluffs Conservation Area
- (F) Fountain Grove Conservation Area
- (G) Grand Pass Conservation Area
- (H) B. K. Leach Memorial Conservation Area
- (I) Marais Temps Clair Conservation Area
- (J) Montrose Conservation Area
- (K) Nodaway Valley Conservation Area
- (L) Otter Slough Conservation Area
- (M) Schell-Osage Conservation Area
- (N) Ted Shanks Conservation Area
- (O) Ten Mile Pond Conservation Area

[[28]] (27) On the portion of Nodaway River bordered by the portion of Nodaway Valley Conservation Area which has been designated a waterfowl refuge, all hunting is prohibited from October 15 through the end of the prescribed waterfowl season.

[[29]] (28) On Burr Oak Woods Conservation Area, spring turkey hunting is permitted only by persons under sixteen (16) years of age holding a Managed Turkey Hunting Permit in addition to the prescribed turkey hunting permit; provided, s/he is hunting in the immediate presence of a properly licensed adult who has in his/her possession a valid hunter education certificate card.

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. For intervening history, please consult the Code of State Regulations. Amended: Filed Sept. 14, 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 10-11.200 Fishing, General Provisions and Seasons. The commission proposes to amend subsection (2)(H).

PURPOSE: This amendment removes Chloe Lowry Marsh Natural Area from the list of department area lakes where fishing is prohibited.

(2) Fishing is prohibited on the following department areas or individually named lakes:

- [(H)] Chloe Lowry Marsh Natural Area*
- [(I)] (H) Mon-Shon Prairie Conservation Area*
- [(J)] (I) Mount Vernon Prairie*
- [(K)] (J) Niawathe Prairie Conservation Area*
- [(L)] (K) Pawhuska Prairie*
- [(M)] (L) Powder Valley Conservation Nature Center*
- [(N)] (M) Springfield Conservation Nature Center*
- [(O)] (N) Wah-Kon-Tah Prairie (portion south of Highway 82)*
- [(P)] (O) Wah-Sha-She Prairie*
- [(Q)] (P) Henry Jackson Waters and C.B. Moss Memorial Wildlife Area*
- [(R)] (Q) Mark Youngdahl Urban Conservation Area*

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 Aug. 30, 2001, effective Jan. 30, 2002. Amended: Filed Sept. 14, 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 10-11.205 Fishing, Methods and Hours. The commission proposes to amend sections (1), (3) and (8), add new sections (9) and (10) and renumber the sections accordingly.

PURPOSE: This amendment allows for the take of carp, buffalo, suckers and gar at Nodaway County Community Lake by methods other than pole and line; removes some fishing restrictions at Coot Lake; permits the seining or trapping of live bait from lakes on ponds on the Ted Shanks Conservation Area; clarifies the regulations that permit seining and trapping of live bait on other department areas; and, closes department areas where several crayfish species of concern are found.

(1) On lakes and ponds, fish may be taken only with pole and line and not more than three (3) poles may be used by one (1) person at any time, except as otherwise provided in this chapter.

(B) Carp, buffalo, suckers and gar may be taken by gig, longbow, or crossbow during statewide seasons on the following department areas or individually named lakes:

1. Atlanta Conservation Area
2. Bismarck Conservation Area

3. Blackjack Access
4. Bob Brown Conservation Area
5. Columbia Bottom Conservation Area
6. Cooley Lake Conservation Area
7. Deer Ridge Conservation Area
8. Deroin Bend Conservation Area
9. Duck Creek Conservation Area
10. Eagle Bluffs Conservation Area
11. Connor O. Fewel Conservation Area
12. Fountain Grove Conservation Area
13. Four Rivers Conservation Area
14. Franklin Island Conservation Area
15. Grand Pass Conservation Area
16. Hunnewell Lake Conservation Area
17. King Lake Conservation Area
18. Kings Prairie Access
19. Lake Paho Conservation Area
20. Lamine River Conservation Area
21. B. K. Leach Memorial Conservation Area
22. Limpp Community Lake
23. Little Compton Lake Conservation Area
24. Locust Creek Conservation Area
25. Manito Lake Conservation Area
26. Marais Temps Clair Conservation Area
- 27. Nodaway County Community Lake**
- [27.] 28.* Nodaway Valley Conservation Area
- [28.] 29.* Otter Lake (Otter Slough Conservation Area)
- [29.] 30.* Peabody Conservation Area
- [30.] 31.* Ralph and Martha Perry Memorial Conservation Area
- [31.] 32.* Haysler A. Poague Conservation Area
- [32.] 33.* Pony Express Lake Conservation Area
- [33.] 34.* Rebel's Cove Conservation Area
- [34.] 35.* Schell-Osage Conservation Area
- [35.] 36.* Henry Sever Lake Conservation Area
- [36.] 37.* Settle's Ford Conservation Area
- [37.] 38.* Ted Shanks Conservation Area
- [38.] 39.* H. F. Thurnau Conservation Area
- [39.] 40.* Truman Reservoir Management Lands
- [40.] 41.* Worth County Community Lake
- [41.] 42.* Worthwine Island Conservation Area

(3) On James A. Reed Memorial Wildlife Area:

[(B)] On Coot Lake, from November 1 through January 31, only flies and artificial lures may be used and fish must be returned to the water unharmed immediately after being caught.]

[(C)] (B) On Honker Pond, fishing is restricted to persons fifteen (15) years of age or younger and not more than one (1) pole and line may be used by any one (1) person at one time.

[(D)] (C) On Prairie Hollow Lake, fishing is permitted only by reservation by educational groups, and fish must be returned to the water unharmed immediately after being caught except as provided by special use permit.

(8) Seining or trapping live bait, including tadpoles, is prohibited on all lakes and ponds, *[and on streams and the discharge channels of impoundments on Mule Shoe Conservation Area,]* except as otherwise provided in this chapter.

(A) Seining or trapping live bait, excluding all frogs and tadpoles, in compliance with 3 CSR 10-6.605 is permitted on designated lakes and ponds on the following department areas:

1. Atlanta Conservation Area
2. Bob Brown Conservation Area
3. Fountain Grove Conservation Area
4. Grand Pass Conservation Area
5. Long Branch Lake Management Lands
6. Locust Creek Conservation Area
7. Nodaway Valley Conservation Area

- 8. Rebel's Cove Conservation Area
- 9. Ted Shanks Conservation Area

(9) On Mule Shoe Conservation Area, seining or trapping live bait, including tadpoles, is prohibited on streams and the discharge channels of impoundments.

(10) The taking of crayfish, is prohibited on the following:

- (A) Caney Mountain Conservation Area
- (B) Cover Prairie Conservation Area
- (C) George and Vida Martin Access
- (D) Turnback Cave (Paris Springs Access)

[(9)] (11) Salvage seining of other fish as designated in 3 CSR 10-6.550 may be permitted seasonally for personal use with a special use permit.

[(10)] (12) On Wire Road Conservation Area, other fish as designated in 3 CSR 10-6.550 may be taken by snagging, snaring, or grabbing from March 15 through May 15.

[(11)] (13) On the Burr Oak Woods Conservation Area aquatic education pond, fishing is permitted only by reservation by educational groups, and fish must be returned to the water unharmed immediately after being caught except as provided by special use permit.

[(12)] (14) On the Platte Falls Conservation Area aquatic education ponds, fish must be returned to the water unharmed immediately after being caught.

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. For intervening history, please consult the Code of State Regulations. Amended: Filed Sept. 14, 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 10-11.210 Fishing, Daily and Possession Limits. The commission proposes to amend sections (5), (7) and (11).

PURPOSE: This amendment removes the special crappie regulation on Hazel Hill Lake; lowers the crappie daily limit to fifteen (15) at Robert G. DeLaney Lake; lowers the bluegill daily limit to ten (10) at General Watkins Conservation Area; and corrects an inconsistency.

(5) On Bellefontaine Conservation Area, [Hazel Hill Lake] **Robert G. DeLaney Lake Conservation Area** and Schell-Osage Conservation Area, the daily limit for crappie shall be fifteen (15).

(7) At Tobacco Hills Lake (Guy B. Park Conservation Area), [and/ August A. Busch Memorial Conservation Area and **General Watkins Conservation Area**, the daily limit for bluegill and other sunfish shall be ten (10) in the aggregate.

(11) On Bellefontaine Conservation Area, Port Hudson Lake Conservation Area and James A. Reed Memorial Wildlife Area, the daily limit for [other] fish [as designated in 3 CSR 10-6.550] **other than those designated as endangered in 3 CSR 10-4.111 or defined as game fish** shall be ten (10) in the aggregate.

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. For intervening history, please consult the Code of State Regulations. Amended: Filed Sept. 14, 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 10-11.215 Fishing, Length Limits. The commission proposes to amend sections (2), (6) and (8).

PURPOSE: This amendment establishes a fifteen inch (15") minimum length limit on black bass on Apple Creek Conservation Area and Castor River Conservation Area; changes Union Ridge Lake from a fifteen inch (15") minimum length limit on black bass to twelve inches to fifteen inches (12"-15") protected length range; establishes an eight inch (8") minimum length limit on bluegill at General Watkins Conservation Area; removes the forty-two inch (42") minimum length limit for muskellunge at Lake Girardeau and Henry Sever Lake; and establishes a nine inch (9") minimum length limit for crappie at Robert G. DeLaney Lake Conservation Area.

(2) On lakes and ponds, except as listed below, black bass more than twelve inches (12") but less than fifteen inches (15") total length must be returned to the water unharmed immediately after being caught.

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

1. Amarugia Highlands Conservation Area
2. **Apple Creek Conservation Area**
- [2.] 3. Atkinson Lake (Schell-Osage Conservation Area)
- [3.] 4. Baltimore Bend Conservation Area

- [4.] 5. Bilby Ranch Lake Conservation Area
 [5.] 6. Binder Community Lake
 [6.] 7. Buffalo Bill Lake (Pony Express Lake Conservation Area)
 [7.] 8. August A. Busch Memorial Conservation Area (except Lakes 33 and 35)
9. Castor River Conservation Area
 [8.] 10. Che-Ru Lake (Fountain Grove Conservation Area)
 [9.] 11. Jerry P. Combs Lake (Little River Conservation Area)
 [10.] 12. Deer Ridge Lake (Deer Ridge Conservation Area)
 [11.] 13. General Watkins Conservation Area
 [12.] 14. Jamesport Community Lake
 [13.] 15. J. N. "Turkey" Kearn Memorial Wildlife Area
 [14.] 16. Limpp Community Lake
 [15.] 17. Lone Jack Lake Conservation Area
 [16.] 18. Maple Leaf Lake Conservation Area
 [17.] 19. Nodaway County Community Lake
 [18.] 20. Otter Slough Conservation Area
 [19.] 21. Perry County Community Lake
 [20.] 22. Pony Express Lake (Pony Express Lake Conservation Area)
 [21.] 23. Ray County Community Lake
 [22.] 24. James A. Reed Memorial Wildlife Area
 [23.] 25. Rinquelin Trail Community Lake
 [24.] 26. Schell Lake (Schell-Osage Conservation Area)
 [25.] 27. Ted Shanks Conservation Area
 [26.] 28. Tobacco Hills Lake (Guy B. Park Conservation Area)
 [27.] 28. *Union Ridge Lake (Union Ridge Conservation Area)*
 [28.] 29. Vandalia Community Lake
 [29.] 30. Weldon Spring Conservation Area
 [30.] 31. Worth County Community Lake

(6) On Tobacco Hills Lake (Guy B. Park Conservation Area) and **General Watkins Conservation Area**, bluegill less than eight inches (8") total length must be returned to the water unharmed immediately after being caught.

[(8) On Lake Girardeau Conservation Area and Henry Sever Lake Conservation Area, muskellunge less than forty-two inches (42") total length must be returned to the water unharmed immediately after being caught.]

(8) On Robert G. DeLaney Lake Conservation Area, all crappie less than nine inches (9") total length must be returned to the water unharmed immediately after being caught.

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 Aug. 30, 2001, effective Jan. 30, 2002. Amended: Filed May 9, 2002, effective March 1, 2003. Amended: Filed Oct. 9, 2003, effective March 30, 2004. Amended: Filed Sept. 29, 2004, effective Feb. 28, 2005. Amended: Filed Sept. 14, 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 subsection (1)(A) and add a new subsection (1)(Q).

PURPOSE: This amendment establishes closed hours at Jack Floyd Memorial Lake and Valley Water Mill 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.

(A) Bowling Green (West City Lake and **Jack Floyd Memorial Lake**)

(Q) **Watershed Committee of the Ozarks (Valley Water Mill Lake)**

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, effective Sept. 30, 2005. Amended: Filed Sept. 14, 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 add new subsections (2)(W) and (6)(D), amend subsection (6)(M) and reletter the remaining subsections.

PURPOSE: This rule establishes provisions for use of boats and motors at Valley Water Mill Lake, allows use of outboard motors larger than ten (10) horsepower under a slow, no-wake speed at Green City Lake and corrects the name of Monroe City.

(2) Boats are prohibited on the following areas:

(W) **Watershed Committee of the Ozarks (Valley Water Mill 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:

(D) **Green City Lake**

[[D]] (E) Little River Drainage District (Head-waters Diversion Channel)

[(E)] (F) Higginsville City Lake
[(F)] (G) Holden City Lake
[(G)] (H) Iron Mountain City Lake
[(H)] (I) Macon City Lake
[(I)] (J) Marceline (Marceline City Lake, Old Marceline City Reservoir)
[(J)] (K) Mark Twain National Forest (Council Bluff Lake, Palmer Lake)
[(K)] (L) Memphis (Lake Showme)
[(L)] (M) Milan (Elmwood Lake)
[(M)] (N) Monroe City (Route J Reservoir)
[(N)] (O) Watkins Woolen Mill State Park and Historic Site (Williams Creek 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 Sept. 14, 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 subsection (2)(E).

PURPOSE: This amendment removes the special length limit at Lewis County Public Water Supply District #1 (Ewing 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 being caught, except as follows:

(E) There is no length limit on black bass on Cuivre River State Park (Lincoln Lake) [and Lewis County Public Water Supply District #1 (Ewing 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 Sept. 14, 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 sections (24), (25), (26) and (58), add a new section (29) and renumber the sections accordingly.

PURPOSE: This amendment alphabetizes species as an editorial standard and adds the definition of invertebrates.

(24) Game birds: [Geese, ducks, ring-necked pheasant, gray partridge, ruffed grouse, wild turkey, northern bobwhite quail, Virginia rail, sora rail, American coot, American woodcock, common snipe, mourning dove, Eurasian collared-dove, white-winged dove and crows.] American coot, American woodcock, common snipe, crows, ducks, Eurasian collared-dove, geese, gray partridge, mourning dove, northern bobwhite quail, ring-necked pheasant, ruffed grouse, sora rail, Virginia rail, white-winged dove and wild turkey.

(25) Game fish: Shall include the following in which the common names are to be interpreted as descriptive of, but not limiting, the classification by Latin names:

[(A) *Ambloplites*, all species of rock bass, commonly known as goggle-eye, redeye, shadow bass, Ozark bass.

[(B) *Lepomis gulosus*, commonly known as warmouth bass.

[(C) *Esox*, all species commonly known as muskellunge, tiger muskie, muskie-pike hybrid, northern pike, chain pickerel, grass pickerel.

[(D) *Ictalurus*, all species except bullheads, commonly known as channel catfish, blue catfish, Mississippi cat, Fulton cat, spotted cat, white cat, willow cat, fiddler cat.

[(E) *Micropterus*, all species of black bass and their hybrids, commonly known as largemouth bass, lineside bass, small-mouth bass, brown bass, Kentucky bass, spotted bass.

[(F) *Polyodon*, all species, commonly known as paddlefish, spoonbill.

[(G) *Pomoxis*, all species, commonly known as crappie, white crappie, black crappie.

[(H) *Pylodictis*, commonly known as flathead catfish, goujon, yellow cat, river cat.

[(I) *Morone*, all species and their hybrids, commonly known as white bass, yellow bass, striped bass.

[(J) *Oncorhynchus* and *Salmo*, all species commonly known as salmon and trout.

[(K) *Sander*, all species and their hybrids, commonly known as walleye, pike perch, jack salmon, sauger.

[(L) *Scaphirhynchus platyrhynchus*, commonly known as shovelnose sturgeon, hackleback, sand sturgeon.]

(A) *Ambloplites*, all species of rock bass, commonly known as goggle-eye, redeye, shadow bass, Ozark bass.

(B) *Esox*, all species commonly known as muskellunge, tiger muskie, muskie-pike hybrid, northern pike, chain pickerel, grass pickerel.

(C) *Ictalurus*, all species except bullheads, commonly known as channel catfish, blue catfish, Mississippi cat, Fulton cat, spotted cat, white cat, willow cat, fiddler cat.

(D) *Lepomis gulosus*, commonly known as warmouth bass.

(E) *Micropterus*, all species of black bass and their hybrids, commonly known as largemouth bass, lineside bass, smallmouth bass, brown bass, Kentucky bass, spotted bass.

(F) *Morone*, all species and their hybrids, commonly known as white bass, yellow bass, striped bass.

(G) *Oncorhynchus* and *Salmo*, all species commonly known as salmon and trout.

(H) *Polyodon*, all species, commonly known as paddlefish, spoonbill.

(I) *Pomoxis*, all species, commonly known as crappie, white crappie, black crappie.

(J) *Pylodictis*, commonly known as flathead catfish, goujon, yellow cat, river cat.

(K) *Sander*, all species and their hybrids, commonly known as walleye, pike perch, jack salmon, sauger.

(L) *Scaphirhynchus platyrhynchus*, commonly known as shovel-nose sturgeon, hackleback, sand sturgeon.

(26) Game mammals: [*Deer, fox squirrel, gray squirrel, groundhog (woodchuck), cottontail rabbit, swamp rabbit, jack rabbits, and furbearers as defined.*] Cottontail rabbit, deer, fox squirrel, gray squirrel, groundhog (woodchuck), jackrabbit, swamp rabbit and furbearers as defined.

(29) Invertebrate: Any animal lacking a backbone; this includes all animal phyla other than Chordata. (Examples include insects and other arthropods, flatworms, roundworms, segmented worms and mollusks.)

[(29)] (30) Length of fish: Total length is measured from the tip of the snout to the end of the tail, with the fish laid flat on the rule with mouth closed and tail lobes pressed together. The length of paddlefish is measured from the eye to the fork of the tail. The length of sturgeon is measured from the tip of the snout to the fork of the tail.

[(30)] (31) Lessee: Any Missouri resident who resides on at least five (5) acres of land in one (1) continuous tract owned by others, or any member of the immediate household whose legal residence and domicile is the same as the lessee's for at least thirty (30) days last past.

[(31)] (32) Limit: The maximum number or quantity, total length, or both, of any wildlife permitted to be taken or held in possession by any person within a specified period of time according to this Code.

[(32)] (33) Longbow: A bow drawn and held by hand and not fastened to a stock nor to any other device which maintains the bow in a drawn position. This definition includes compound bows.

[(33)](34) Managed deer hunt: A prescribed deer hunt conducted on a designated area for which harvest methods, harvest quotas and numbers of participants are determined annually and presented in the deer hunting rules (3 CSR 10-7.431 and 3 CSR 10-7.436).

[(34)] (35) Mouth of stream or ditch: The point at which a line projected along the shore of a main stream or ditch at the existing water level at time of measurement crosses any incoming stream or ditch.

[(35)] (36) Mussels: All species of freshwater mussels and clams. Includes all shells and alive or dead animals. Two (2) shell halves (valves) shall be considered one (1) mussel.

[(36)] (37) Muzzleloading firearm: Any firearm capable of being loaded only from the muzzle.

[(37)] (38) Night vision equipment: Optical devices (that is, binoculars or scopes) using light amplifying circuits that are electrical or battery powered.

[(38)] (39) Nonresident landowner: Any nonresident of Missouri who is the owner of at least seventy-five (75) acres in one (1) continuous tract in the state of Missouri, or any member of the immediate household whose legal residence and domicile is the same as the nonresident landowner's for at least thirty (30) days last past. In the case of corporate ownership only registered officers of corporations meet this definition.

[(39)] (40) Open season: That time when the pursuing and taking of wildlife is permitted.

[(40)] (41) Other fish: All species other than those listed as endangered in 3 CSR 10-4.111 or defined in this rule as game fish.

[(41)] (42) Poisons, contaminants, pollutants: Any substances that have harmful effect upon wildlife.

[(42)] (43) Pole and line: Fishing methods using tackle normally held in the hand, such as a cane pole, casting rod, spinning rod or fly rod, to which not more than three (3) hooks with bait or lures are attached. This fishing method does not include snagging, snaring, grabbing or trotlines or other tackle normally attached in a fixed position.

[(43)] (44) Possessed and possession: The actual and constructive possession and control of things referred to in this Code.

[(44)] (45) Public roadway: The right of way which is either owned in fee or by easement by the state of Missouri or any county or municipal entity, or which is used by the general public for travel and is also regularly maintained by Department of Transportation, federal, county or municipal funds or labor.

[(45)] (46) Pursue or pursued: Includes the act of trying to find, to seek or to diligently search for wildlife for the purpose of taking this wildlife.

[(46)] (47) Resident landowner: Any Missouri resident who is the owner of at least five (5) acres in one (1) continuous tract, or any member of the immediate household whose legal residence or domicile is the same as the landowner's for at least thirty (30) days last past. In the case of corporate ownership only registered officers of corporations meet this definition.

[(47)] (48) Sell: To exchange for compensation in any material form and the term shall include offering for sale.

[(48)] (49) Snare: A device for the capture of furbearers in a water-set by use of a cable loop. Snares must be constructed of cable that is at least five sixteenth inch (5/64") and no greater than one-eighth inch (1/8") in diameter, and must be equipped with a mechanical lock and anchor swivel.

[(49)] (50) Speargun: A mechanically powered device that propels a single- or multiple-pronged spear underwater.

[(50)] (51) Store and storage: Shall also include chilling, freezing and other processing.

[(51)] (52) Take or taking: Includes killing, trapping, snaring, netting or capturing in any manner, any wildlife, and also refers to pursuing, molesting, hunting, wounding; or the placing, setting or use of any net, trap, device, contrivance or substance in an attempt to take; and every act of assistance to every other person in taking or attempting to take any wildlife.

[(52)] (53) Transgenic: Any organism, or progeny thereof, that contains DNA from a species that was not a parent of that organism.

[(53)] (54) Transport and transportation: All carrying or moving or causing to be carried or moved from one (1) point to another, regardless of distance, vehicle or manner, and includes offering or receiving for transport or transit.

[(54)] (55) Underwater spearfishing: The taking of fish by a diver while underwater, with the aid of a manually or mechanically propelled, single- or multiple-pronged spear.

[(55)] (56) Ungulate: Hoofed animals.

[(56)] (57) Waters of the state: All rivers, streams, lakes and other bodies of surface water lying within or forming a part of the boundaries of the state which are not 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, and including waters of the United States lying within the state. Waters of the state will include any waters which have been stocked by the state or which are subject to movement of fishes to and from waters of the state.

[(57)] (58) Zoo: Any publicly[-] owned facility, park, building, cage, enclosure or other structure or premises in which live animals are held and exhibited for the primary purpose of public viewing.

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. This rule previously filed as 3 CSR 10-II.805. Original rule filed April 30, 2001, effective Sept. 30, 2001. For intervening history, please consult the Code of State Regulations. Amended: Filed Sept. 14, 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 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 5—City Sales Tax, Transportation Sales Tax and
Public Mass Transportation Tax**

PROPOSED RESCISSION

12 CSR 10-5.535 Seller Entitled. This rule indicated that the timely payment of taxes entitles the seller to a deduction and interpreted and applied section 144.140, RSMo 1986.

PURPOSE: This rule is being rescinded because regulation 12 CSR 10-104.030 has superseded this rule.

AUTHORITY: section 94.615, RSMo 1986. T.T. regulation 615-3 originally filed as C.S.T. regulation 540-3 Dec. 31, 1975, effective Jan. 10, 1976. Made applicable by statute and T.T. regulation 615-1 last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Sept. 12, 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 the Missouri Department of Revenue, Legal Services Division, Governmental Affairs Bureau, PO Box 475, Jefferson City, MO 65105-0475. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 5—City Sales Tax, Transportation Sales Tax and
Public Mass Transportation Tax**

PROPOSED RESCISSION

12 CSR 10-5.540 Deductions. This rule indicated that the deductions contained in certain sections of the state sales tax law also apply to transportation sales tax.

PURPOSE: This rule is being rescinded because section 32.087.7, RSMo has superseded this rule.

AUTHORITY: section 94.615, RSMo 1986. T.T. regulation 620-1 originally filed as C.S.T. regulation 540-1 Dec. 31, 1975, effective Jan. 10, 1976. Made applicable by statute and T.T. regulation 615-1 last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Sept. 12, 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 the Missouri Department of Revenue, Legal Services Division, Governmental Affairs Bureau, PO Box 475, Jefferson City, MO 65105-0475. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 5—City Sales Tax, Transportation Sales Tax and
Public Mass Transportation Tax**

PROPOSED RESCISSION

12 CSR 10-5.570 Location of Machine Determines. This rule provided that the location of vending machines determined the applicability of transportation sales tax and interpreted and applied section 94.620.5, RSMo 1986.

PURPOSE: This rule is being rescinded because regulation 12 CSR 10-103.400 has superseded this rule.

AUTHORITY: section 94.615, RSMo 1986. T.T. regulation 620-7 originally filed as C.S.T. regulation 520-1A Dec. 31, 1975, effective Jan. 10, 1976. Made applicable by statute and T.T. regulation 615-1 last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Sept. 12, 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 the Missouri Department of Revenue, Legal Services Division, Governmental Affairs Bureau, PO Box 475, Jefferson City, MO 65105-0475. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

Title 12—DEPARTMENT OF REVENUE

Division 10—Director of Revenue

Chapter 5—City Sales Tax, Transportation Sales Tax and Public Mass Transportation Tax

PROPOSED RESCISSION

12 CSR 10-5.575 Items Taken from Inventory. This rule provided that the taxpayer is liable for transportation sales tax where items purchased under a resale exemption are subsequently withdrawn from inventory and interpreted and applied section 94.620.5, RSMo 1986.

PURPOSE: This rule is being rescinded because regulation 12 CSR 10-117.100 has superseded this rule.

AUTHORITY: section 94.615, RSMo 1986. T.T. regulation 620-8 originally filed as C.S.T. regulation 540-5A Dec. 31, 1975, effective Jan. 10, 1976. Made applicable by statute and T.T. regulation 615-1 last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Sept. 12, 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 the Missouri Department of Revenue, Legal Services Division, Governmental Affairs Bureau, PO Box 475, Jefferson City, MO 65105-0475. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

Title 12—DEPARTMENT OF REVENUE

Division 10—Director of Revenue

Chapter 5—City Sales Tax, Transportation Sales Tax and Public Mass Transportation Tax

PROPOSED RESCISSION

12 CSR 10-5.585 Motor Vehicles. This rule provided that sellers engaged in selling motor vehicles are not liable for and should not collect the tax and interpreted and applied section 94.635, RSMo 1986.

PURPOSE: This rule is being rescinded because section 32.087.13, RSMo has superseded this rule.

AUTHORITY: section 94.615, RSMo 1986. T.T. regulation 635-1 filed as C.S.T. regulation 560-1 Dec. 31, 1975, effective Jan. 10, 1976. Made applicable by statute and T.T. regulation 615-1 last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Sept. 12, 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 the Missouri Department of Revenue, Legal Services Division, Governmental Affairs Bureau, PO Box 475, Jefferson City, MO 65105-0475. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

Title 12—DEPARTMENT OF REVENUE

Division 10—Director of Revenue

Chapter 5—City Sales Tax, Transportation Sales Tax and Public Mass Transportation Tax

PROPOSED RESCISSION

12 CSR 10-5.590 Over-the-Road Trailers. This rule indicated that purchasers of over-the-road trailers are subject to the transportation sales tax of the city in which they reside and interpreted and applied sections 94.560 and 144.070, RSMo 1986.

PURPOSE: This rule is being rescinded because section 32.087.13, RSMo has superseded this rule.

AUTHORITY: section 94.615, RSMo 1986. T.T. regulation 635-2 originally filed as C.S.T. regulation 560-3 Dec. 31, 1975, effective Jan. 10, 1976. Made applicable by statute and T.T. regulation 615-1, last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Sept. 12, 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 the Missouri Department of Revenue, Legal Services Division, Governmental Affairs Bureau, PO Box 475, Jefferson City, MO 65105-0475. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

Title 12—DEPARTMENT OF REVENUE

Division 10—Director of Revenue

Chapter 5—City Sales Tax, Transportation Sales Tax and Public Mass Transportation Tax

PROPOSED RESCISSION

12 CSR 10-5.595 Mobile Homes. This rule indicated sellers of mobile homes are subject to tax.

PURPOSE: This rule is being rescinded because section 32.087.13, RSMo has superseded this rule.

AUTHORITY: section 94.615, RSMo 1986. T.T. regulation 635-3 originally filed as C.S.T. regulation 560-2 Oct. 28, 1975, effective Nov. 7, 1975. Made applicable by statute and T.T. regulation 615-1, last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Sept. 12, 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 the Missouri Department of Revenue, Legal Services Division, Governmental Affairs Bureau, PO Box 475, Jefferson City, MO 65105-0475. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 5—City Sales Tax, Transportation Sales Tax and
Public Mass Transportation Tax**

PROPOSED RESCISSION

12 CSR 10-5.605 Delinquent Tax. This rule provided that delinquent transportation sales tax shall be collected in the same manner as state sales tax and interpreted and applied section 94.640, RSMo 1986.

PURPOSE: This rule is being rescinded because section 32.087.7, RSMo has superseded this rule.

AUTHORITY: section 94.615, RSMo 1986. T.T. regulation 640-1 originally filed as C.S.T. regulation 570-1 Oct. 28, 1975, effective Nov. 7, 1975. Made applicable by statute and T.T. regulation 615-1, last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed Sept. 12, 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 the Missouri Department of Revenue, Legal Services Division, Governmental Affairs Bureau, PO Box 475, Jefferson City, MO 65105-0475. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 11—County Sales Tax**

PROPOSED RESCISSION

12 CSR 10-11.050 Location of Machine Determines. This rule specified that the location of vending machines determined the applicability of county sales tax.

PURPOSE: This rule is being rescinded because regulation 12 CSR 10-103.400 has superseded this rule.

AUTHORITY: sections 67.515 and 67.706, RSMo 1986. Original rule filed Sept. 7, 1984, effective Jan. 12, 1985. Rescinded: Filed Sept. 12, 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 the Missouri Department of Revenue, Legal Services Division, Governmental Affairs Bureau, PO Box 475, Jefferson City, MO 65105-0475. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 11—County Sales Tax**

PROPOSED RESCISSION

12 CSR 10-11.060 State Sales Tax Rules Apply. This rule specified that all rules pertaining to state sales tax should also apply to the county sales tax unless stated otherwise.

PURPOSE: This rule is being rescinded because section 32.087.7, RSMo has superseded this rule.

AUTHORITY: sections 67.515 and 67.706, RSMo 1986. Original rule filed Sept. 7, 1984, effective Jan. 12, 1985. Rescinded: Filed Sept. 12, 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 the Missouri Department of Revenue, Legal Services Division, Governmental Affairs Bureau, PO Box 475, Jefferson City, MO 65105-0475. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 11—County Sales Tax**

PROPOSED RESCISSION

12 CSR 10-11.080 Seller Entitled. This rule indicated that the seller was entitled to a deduction for the timely payment of taxes.

PURPOSE: This rule is being rescinded because regulation 12 CSR 10-104.030 has superseded this rule.

AUTHORITY: sections 67.515 and 67.706, RSMo 1986. Original rule filed Sept. 7, 1984, effective Jan. 12, 1985. Rescinded: Filed Sept. 12, 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 the Missouri Department of Revenue, Legal Services Division, Governmental Affairs Bureau, PO Box 475, Jefferson City, MO 65105-0475. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 11—County Sales Tax**

PROPOSED RESCISSION

12 CSR 10-11.160 Motor Vehicles. This rule specified that sellers engaged in selling motor vehicles are not liable for and should not collect the tax.

PURPOSE: This rule is being rescinded because section 32.087.13, RSMo has superseded this rule.

AUTHORITY: sections 67.515 and 67.706, RSMo 1986. Original rule filed Sept. 7, 1984, effective Jan. 12, 1985. Rescinded: Filed Sept. 12, 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 the Missouri Department of Revenue, Legal Services Division, Governmental Affairs Bureau, PO Box 475, Jefferson City, MO 65105-0475. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 11—County Sales Tax**

PROPOSED RESCISSION

12 CSR 10-11.180 Delinquent Tax. This rule specified that the delinquent county sales tax shall be collected in the same manner as state sales tax.

PURPOSE: This rule is being rescinded because section 32.087.7 RSMo has superseded this rule.

AUTHORITY: sections 67.515 and 67.706, RSMo 1986. Original rule filed Sept. 7, 1984, effective Jan. 12, 1985. Rescinded: Filed Sept. 12, 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 the Missouri Department of Revenue, Legal Services Division, Governmental Affairs Bureau, PO Box 475, Jefferson City, MO 65105-0475. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 24—Drivers License Bureau Rules**

PROPOSED AMENDMENT

12 CSR 10-24.412 Commercial Driver/s/ License Waiver For Farm-Related Service Industries. The director proposes to amend subsection (6)(D) and section (11).

PURPOSE: This amendment is the result of recommendations of the federal commercial driver license audit.

(6) To apply for a commercial driver/s/ license restricted in accordance with this rule, the applicant must certify to the following:

(D) That s/he has not been convicted for any of the following offenses in any type of motor vehicle within the last two (2) years:

1. Driving while *[intoxicated or while]* under the influence of alcohol *[or drugs]* as defined in section 302.700, RSMo (which includes driving while intoxicated (DWI) and blood alcohol content (BAC));

2. Driving while under the influence of a controlled substance as defined in section 302.700, RSMo;

3. Refusal to submit to an alcohol test;

[2.] 4. Leaving the scene of an accident;

[3.] 5. Felony involving a motor vehicle other than a felony described in paragraph (6)(D)8.;

6. Driving a commercial motor vehicle when, as a result of prior violations committed while operating a commercial motor vehicle, the driver's commercial driver license is revoked, suspended, or canceled, or the driver is disqualified from operating a commercial motor vehicle;

7. Causing a fatality through the negligent operation of a commercial motor vehicle, including but not limited to, the crimes of vehicular manslaughter, homicide by motor vehicle and negligent homicide;

8. Using any vehicle in the commission of a felony involving the manufacturing, distributing or dispensing of a controlled substance;

[4.] 9. Speeding fifteen (15) or more miles over the posted speed limit;

[5.] 10. Careless, imprudent or reckless driving;

[6.] 11. Erratic or improper traffic lane changes;

[7.] 12. Following too closely; *[or]*

13. Violating state or local law relating to motor vehicle traffic control (other than a parking violation) arising in connection

with a fatal accident;

14. Driving a commercial motor vehicle without obtaining a commercial driver license;

15. Driving a commercial motor vehicle without a commercial driver license in the driver's possession;

16. Driving a commercial motor vehicle without the proper class of commercial driver license and/or endorsements for the specific vehicle group being operated or for the passengers or type of cargo being transported; or

[8.] 17. Any conviction for a traffic law violation in connection with an accident; and

(11) At the time of renewal of the restricted commercial driver/s/ license, the holder may apply for the license and restriction card at a Department of Revenue [branch or fee] contract office.

AUTHORITY: sections 302.775, RSMo Supp. 2004, and 302.765, RSMo [Supp. 1996] 2000, and 49 CFR 383.3. Emergency rule filed May 6, 1992, effective May 16, 1992, expired Sept. 12, 1992. Emergency rule filed Sept. 3, 1992, effective Sept. 13, 1992, expired Jan. 10, 1993. Original rule filed May 6, 1992, effective Dec. 3, 1992. Emergency amendment filed Nov. 9, 1994, effective Nov. 19, 1994, expired March 18, 1995. Emergency amendment filed March 9, 1995, effective March 19, 1995, expired July 16, 1995. Amended: Filed Nov. 9, 1994, effective May 28, 1995. Amended: Filed June 23, 1997, effective Dec. 30, 1997. Amended: Filed Sept 6, 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 Missouri Department of Revenue, Legal Services Division, Governmental Affairs Bureau, PO Box 475, Jefferson City, MO 65105-0475. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 103—Sales/Use Tax—Imposition of Tax**

PROPOSED RULE

12 CSR 10-103.350 Sales Tax on Motor Vehicles

PURPOSE: This rule explains the application of sales tax on the sale of motor vehicles as it relates to sections 144.010.1(5), 144.020.1(1), 144.025.1, 144.069 and 144.070, RSMo.

(1) In general, the sale of motor vehicles and trailers are subject to tax.

(2) Definition of Terms.

(A) Agricultural use—used in cultivating or raising agricultural products.

(B) All-terrain vehicle—any motorized vehicle manufactured and used exclusively for off-highway use which is fifty inches (50") or less in width, with an unladen dry weight of six hundred (600) pounds or less, traveling on three (3), four (4) or more low pressure tires, with a seat designed to be straddled by the operator, and handlebars for steering control.

(C) Grain or livestock produced or raised by the purchaser—means the purchaser of the motor vehicle or trailer has either cultivated the grain or has cared for the livestock.

(D) Highway—any public thoroughfare for vehicles.

(E) Motor vehicle—any self-propelled vehicle not operated exclusively upon tracks, except farm tractors. Off-road utility vehicles are not motor vehicles, but all-terrain vehicles are treated as motor vehicles for purposes of this rule.

(F) Off-road utility vehicle—any motorized vehicle manufactured and used exclusively for off-highway use with a seat that is not designed to be straddled by the operator, and with a steering mechanism other than handlebars.

(G) Trailer—any vehicle without motive power designed for carrying property or passengers on its own structure and for being drawn by a motor vehicle, except those running exclusively on tracks, cotton trailers and manufactured homes.

(H) Vehicle—any mechanical device on wheels, designed primarily for use, or used, on highways, except motorized bicycles, vehicles propelled or drawn by horses or human power, or vehicles used exclusively on fixed rails or tracks, or cotton trailers or motorized wheelchairs operated by handicapped persons.

(3) Basic Application.

(A) Sales tax on motor vehicles and trailers is remitted to the Department of Revenue when submitting the application for title to the department. The applicable tax rate is the rate in effect at the address of the purchaser at the time the application is submitted to the department.

(B) If a person purchases a motor vehicle or trailer, and, before titling and registering it in Missouri, moves and titles it out-of-state within thirty (30) days of the purchase, no Missouri tax is due. If a person registers a motor vehicle or trailer in another state and regularly operates it in such state for at least ninety (90) days prior to registering it in Missouri, no Missouri tax is due. If the vehicle is brought to Missouri within ninety (90) days of registering the motor vehicle or trailer, Missouri tax is due but is reduced by any tax paid to the other state.

(C) A person registered with the department as a motor vehicle leasing company may elect to pay tax on its purchase of a motor vehicle or trailer or may purchase the motor vehicle or trailer without paying tax on the purchase and collect and remit tax on the lease receipts. If the motor vehicle leasing company chooses to pay tax on its purchase rather than the lease receipts, the tax rate it remits is based on the location of the motor vehicle leasing company. If the motor vehicle leasing company elects to collect and remit tax on the lease receipts and the lease is for more than sixty (60) days, tax is due on any down payment and lease receipts based on the address of the lessee. If the lease is for sixty (60) days or less, tax is due based on the location of the motor vehicle leasing company. Once a motor vehicle leasing company makes an election to pay tax on its purchases or to collect and remit tax on its subsequent lease receipts, the election must be the same for all vehicles it purchases for lease. To qualify as a motor vehicle leasing company that will remit tax on lease receipts, the company must first obtain a permit to operate as a motor vehicle leasing company from the department.

(D) When a person trades tangible personal property to a motor vehicle dealer for a motor vehicle or trailer, tax is due on the difference between the price of the motor vehicle or trailer purchased and the amount allowed for the trade-in. If the amount allowed for the trade-in is greater than the purchase price of the motor vehicle or trailer, no tax is due. When a manufacturer's rebate is offered, the tax due is based on the purchase price of the motor vehicle or trailer less the rebate. A trade-in allowance applies only to transactions between a purchaser and a motor vehicle dealer.

(E) Except as provided in subsection (3)(F), if an article is traded for a motor vehicle or trailer, the person trading the article must have paid or otherwise satisfied the tax on the purchase of the article unless the purchase was exempt or excluded from tax.

(F) Grain or livestock raised or produced by a purchaser may be traded for a motor vehicle or trailer, if the motor vehicle or trailer is purchased from a motor vehicle dealer for agricultural use.

(G) If a person purchases or contracts to purchase a motor vehicle or trailer and sells one (1) or more motor vehicles or trailers within one hundred eighty (180) days before or after the purchase or contract to purchase, the person owes tax on the difference between the purchase price and the sale price of the respective motor vehicles or trailers. If the person paid the full amount of the tax on the purchase, the person may obtain a refund of the excess tax paid.

(H) If a person suffers a total insurance loss and subsequently purchases or contracts to purchase a replacement vehicle after the date of loss but no later than one hundred eighty (180) days after the date of the total loss payment, the person can offset the insurance payoff amount plus any deductible against the purchase price and remit tax on the difference. If the vehicle is not covered by insurance, the person must purchase the replacement vehicle within one hundred eighty (180) days of the loss. The person can only offset the loss against the purchase of one (1) replacement vehicle.

(I) If a person who has previously titled and paid tax on a vehicle gives the vehicle to another person, the person must complete a gift statement for the person to whom the vehicle was given to present when titling with the department. No tax is due.

(J) A sale of an all-terrain vehicle by a non-dealer is subject to sales tax if the purchase price is more than three thousand dollars (\$3,000). A sale of an all-terrain vehicle by a non-dealer is not subject to sales tax if the purchase price is three thousand dollars (\$3,000) or less. See 12 CSR 10-103.200.

(4) Examples.

(A) A person purchases a vehicle for \$18,000 at the local car dealership. As a part of the transaction, the dealer offers a \$500 rebate and the person trades a vehicle for another \$3,000. The purchaser must pay tax to the Department of Revenue when titling the vehicle on \$14,500 ($\$18,000 - \$3,500 = \$14,500$). The applicable rate is the rate in effect at the purchaser's address at the time of titling.

(B) A person purchases a vehicle from a dealer for \$25,000 in May. That person pays tax on \$25,000. In June, the person sells a different vehicle for \$15,000 and an outboard motor for \$500. Because the sales took place within 180 days of the purchase of the vehicle, the person can obtain a refund of tax paid on the purchase transaction based upon the \$15,500 received on the sale.

(C) A person is in an accident that results in a total loss of the vehicle. After the loss of this vehicle, the person buys a new vehicle for \$15,000 and pays tax on the full amount when titling the vehicle with the department. Two weeks after purchasing the vehicle, the insurance company pays \$5,000 on the loss of the vehicle. The policy included a \$500 deductible. The person can obtain a refund of tax based upon \$5,500, which includes the \$5,000 paid by the insurance company and the \$500 deductible.

(D) A person owns a motor vehicle. The person buys a second motor vehicle and puts the first motor vehicle on the market. Before the first vehicle is sold, it is in an accident that results in a total loss of the vehicle. Two weeks after the accident, the insurance company pays \$5,000 on the loss of the first vehicle. The person cannot obtain a refund of tax because the person did not purchase a replacement vehicle after the first vehicle was destroyed.

(E) A person is in an accident that results in a total loss of the vehicle. The vehicle was not insured. After the loss of this vehicle, the person buys a new vehicle for \$15,000. The Kelly Blue Book value for the lost vehicle is \$5,000. When titling the vehicle with the department, the person pays tax on \$10,000, which is the \$15,000 cost of the new vehicle less the value of the loss.

(F) A person purchases an all-terrain vehicle from a local dealer. The purchaser must obtain a title and remit tax to the department based on the rate in effect at the purchaser's location at the time of titling.

(G) A business sells an off-road utility vehicle. The utility vehicle

is not a motor vehicle and does not need to be titled. The business must collect and remit tax on the sale.

(H) A person trades in grain valued at \$5,000 to a dealer on the purchase of a cattle trailer valued at \$10,000. The purchaser grew the grain and will use the cattle trailer in its business of raising cattle. The purchaser receives a trade-in credit of \$5,000 on the purchase of the trailer because the purchaser produced the grain and the trailer is used by the purchaser in agriculture.

(I) Same situation as subsection (4)(H), except the purchaser's son produced the grain. The purchaser receives no trade-in credit because the purchaser did not produce the grain that was traded.

(J) A landowner agrees with a local farmer that the farmer can farm some of landowner's land in exchange for 50% of the crops produced on the land. The landowner trades in grain grown by the farmer on the land on the purchase of a horse trailer used in the landowner's breeding operations. The landowner receives a trade-in credit on the purchase of the trailer. The landowner shares the risk of a successful harvest and therefore, is cultivating the grain.

(K) A landowner agrees with a local farmer that the farmer can farm some of landowner's land in exchange for \$1,000. The farmer delivers grain grown on the land valued at \$1,000 in payment of the rent. The landowner trades in the grain on the purchase of a horse trailer used in the landowner's breeding operations. The landowner does not receive a trade-in credit on the purchase of the trailer because the landowner is merely renting land, not cultivating grain.

(L) A farmer sells grain raised by the farmer to an elevator and directs the elevator to pay the farmer for the grain by delivering a check payable to a local motor vehicle dealer. The farmer uses the check to purchase a pickup truck that will be used to haul and carry necessary supplies and materials to and from the farm. The transaction does not qualify for the trade-in allowance because the grain was not traded to the dealer for the truck. Instead, it was sold to the elevator and the proceeds were used to purchase the truck.

(M) An out-of-state motor vehicle leasing company purchases a motor vehicle out of state and leases it to a Missouri resident. The leasing company has elected to pay tax on lease receipts rather than on the purchase. The lease payments are subject to sales tax at the rate in effect at the location of the Missouri resident.

(N) An out-of-state motor vehicle leasing company purchases a motor vehicle out-of-state and leases it to an out-of-state resident. The resident's state requires the leasing company to pay tax on all proceeds under the lease at the time of the lease. During the term of the lease, the lessee moves to Missouri. Under section 144.440, RSMo, the lease payments are subject to highway use tax at the rate in effect at the location of the Missouri resident. The lessor receives credit for any tax paid to another state on the lease receipts.

(O) An individual purchases a used motor vehicle by making a down payment, trading in another vehicle, and using dealer financing for the balance of the purchase price. Prior to titling the vehicle, the dealer repossesses the vehicle for failure to make payments under the financing agreement. The individual still owes sales tax on the purchase of the vehicle unless the dealer agrees in writing to void the sale and return all payments and the trade-in to the purchaser.

AUTHORITY: sections 144.010.1(5), 144.020.1(1), 144.025.1, RSMo Supp. 2004 and 144.069, 144.070 and 144.270, RSMo 2000. Original rule filed Sept. 12, 2005.

PUBLIC COST: This proposed rule is estimated to cost the Missouri Department of Revenue approximately fifty-five thousand three hundred fifty-seven dollars (\$55,357) with that cost recurring annually over the life of the rule.

PRIVATE COST: This proposed rule is estimated to cost private entities approximately six hundred twenty-five thousand five hundred dollars (\$625,500) with that cost recurring annually 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 Missouri Department of Revenue, Legal Services Division, Governmental Affairs Bureau, PO Box 475, Jefferson City, MO 65105-0475. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

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

Rule Number and Name:	12 CSR 10-103.350 Sales Tax on Motor Vehicles
Type of Rulemaking:	Proposed Rule

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Missouri Department of Revenue	\$55,357

III. WORKSHEET

It costs the Department of Revenue \$2.25 to process a typical sales tax return. Based on an estimated 20,850 returns filed by sellers of motor vehicles or trailers in a given year, the costs to process are $20,850 \times \$2.25 = \$46,912.50$. The Department of Revenue's costs to print and mail returns to sellers are \$.405 per return. The calculation for these costs are $20,850 \times \$.405 = \$8,444.25$.

IV. Assumptions

The costs assume no postal discounts for mailing are realized. It also assumes an annual salary for a Tax Processing Technician of \$23,006.

**FISCAL NOTE
 PRIVATE COST**

I. RULE NUMBER

Rule Number and Name:	12 CSR 10-103.350 Sales Tax on Motor Vehicles
Type of Rulemaking:	Proposed Rule

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by 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:
3,229	Retail sales of motor vehicles or trailers	\$625,500

III. WORKSHEET

The Department of Revenue receives approximately 20,850 returns annually from 3,229 businesses selling motor vehicles or trailers at retail. The estimated cost to prepare and file a return per business is \$30 per filed return. The cost to businesses to comply then is 20,850 X \$30.

IV. ASSUMPTIONS

The rule does not change existing practice. The department cannot determine the actual costs of preparing and filing a return. The department assumes for purposes of this fiscal note that it costs \$30.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 40—Family Support Division
Chapter 2—Income Maintenance

PROPOSED AMENDMENT

13 CSR 40-2.030 Definitions Relating to Real and Personal Property. The division is amending paragraphs 1. and 8. of subsection (13)(B). The division is also amending section (13) to reflect the name change of the division under Executive Order 03-02 from Division of Family Services (DFS) to Family Support Division (FSD).

PURPOSE: This amendment requires income of an institutionalized spouse be diverted to the community spouse prior to an adjustment in the community spousal share of assets after August 27, 2005 and clarifies that the income limit for Medical Assistance program on the need for home- and community-based waiver services is adjusted annually.

(1) In determining eligibility for public assistance, the **Children's Division [of Family Services (DFS)] (FSD)** shall consider property of any kind or character which the claimant owns or possesses or has an interest in, of which s/he is the record or beneficial owner, less encumbrances of record.

(13) Notwithstanding the previously mentioned eligibility requirements with respect to resources, the following will apply to individuals meeting the definition of institutionalized spouses who begin a period of continuous institutionalization on or after September 30, 1989:

(A) As used in this section, the definitions for the following terms shall apply:

1. Assessment shall mean a determination by the *[DFS] FSD* of the total equity value of available resources (as stated in sections (6)–(12)) owned by the institutionalized spouse, the community spouse, or both, which may be requested at the beginning of a period of continuous institutionalization expected to last at least thirty (30) days or more;

2. Community spouse shall mean the husband or wife of an institutionalized spouse who does not reside in a medical hospital or a Medicaid-certified bed in a nursing facility (NF) and, if the institutionalized spouse is one who meets the definition in subparagraph (13)(A)3.C., the community spouse may not be one who meets those criteria;

3. Institutionalized spouse shall mean a claimant who resides in—

A. A medical hospital;

B. A Medicaid-certified bed in an NF, with an expected stay of at least thirty (30) days; or

C. His/her own home and is assessed by the Division of *[Aging] Disability and Senior Services* as needing both an NF level-of-care as defined in *[13 CSR 15-9.030] 19 CSR 30-81.030* and home- and community-based waiver services and is assessed to need these services for at least thirty (30) days, and is married to a person who meets the definition of a community spouse in paragraph (13)(A)2.; and

4. Period of continuous institutionalization shall mean a stay in a medical hospital or Medicaid-certified bed in an NF or when the Division of *[Aging] Disability and Senior Services* determines a need for home- and community-based waiver services which is expected to last thirty (30) days or more; and

(B) The following shall apply with regard to resource eligibility for institutionalized spouses who begin a period of continuous institutionalization on or after September 30, 1989:

1. When an individual meets the criteria in subparagraph (13)(A)3.C., his/her gross monthly income shall be compared to *[eight hundred dollars (\$800)] one thousand twelve dollars*

(\$1,012). If his/her gross monthly income is equal to or less than *[eight hundred dollars (\$800)] one thousand twelve dollars (\$1,012)*, the *[DFS] FSD* shall complete an assessment of assets as defined in paragraph (13)(B)2. When his/her gross monthly income is greater than *[eight hundred dollars (\$800)] one thousand twelve dollars (\$1,012)*, s/he is not eligible for an assessment of assets as defined in paragraph (13)(B)2. **The one thousand twelve dollar (\$1,012) income limit shall be increased each year effective January 1 in accordance with the Social Security cost-of-living adjustment (COLA), beginning in 2006;**

2. At the beginning of the first period of continuous institutionalization, the institutionalized spouse, the community spouse or a representative acting on behalf of either may request an assessment by the *[DFS] FSD* of total equity in available resources owned by either or both in the month in which the period of institutionalization began or, in the case of an institutionalized spouse who meets the definition in subparagraph (13)(A)3.C. and who met that definition prior to January 1, 1993, January 1993 shall be substituted for the month in which the period of institutionalization began;

3. From this total, the *[DFS] FSD* shall compute the spousal share, which shall be the greater of—1) twelve thousand dollars (\$12,000) or 2) one-half (1/2) of the total, not to exceed sixty thousand dollars (\$60,000). The twelve thousand dollar (\$12,000) minimum and the sixty thousand dollar (\$60,000) maximum shall be increased each January in accordance with the increase in the Consumer Price Index, beginning in 1990;

4. In determining initial Medicaid eligibility for the institutionalized spouse in this continuous period of institutionalization, the *[DFS] FSD* again shall determine the total equity in available resources owned by the institutionalized spouse, the community spouse, or both, at the time of Medicaid request. From this total, the *[DFS] FSD* shall deduct the amount of the spousal share as computed in paragraphs (13)(B)2. and 3. If the remainder is equal to or less than the appropriate resource maximum for a single person, the institutionalized individual, to the extent the individual expresses intent to transfer any excess resources to the community spouse, shall be initially eligible for Medicaid on the factor of available resources. Eligibility for Medicaid for individuals described in subparagraph (13)(A)3.C. who become resource eligible using the assessment described in paragraph (13)(B)2. cannot begin prior to the date the individual actually receives home- and community-based waiver services;

5. Any such individual who is determined initially eligible for Medicaid must transfer any resources above the appropriate resource maximum which are held in the individual's name to the community spouse within ninety (90) days of notification of initial eligibility, unless good cause exists;

6. If good cause does not exist, the *[DFS] FSD* shall consider any resources held in the name of the institutionalized spouse, including any jointly-owned resources, in determining continued Medicaid eligibility, effective ninety (90) days after notification of initial eligibility;

7. After the determination of initial eligibility for the institutionalized spouse, no resources of the community spouse not jointly owned with the institutionalized spouse shall be considered available to the institutionalized spouse in Medicaid determinations in that continuous period of institutionalization;

8. If either spouse establishes in a fair hearing that the spousal share (in relation to the amount of income generated by that amount) is inadequate to raise the community spouse's own income to the amount determined in 13 CSR 40-2.200(5)(A), the spousal share may be adjusted to an amount adequate to provide the additional income. **At the fair hearing the maximum amount of the institutionalized spouse's income that may be made available to the community spouse under 42 U.S.C. 1396r-5(d), shall be considered the community spouse's own income;** and

9. If a court has entered an order against an institutionalized spouse for the support of the community spouse, the amount of the order shall be substituted for the spousal share.

AUTHORITY: section 207.020, RSMo [1994] 2000. Filing dates for original rules are shown in the text of the rule. This version filed March 24, 1976. For intervening history, please consult the Code of State Regulations. Amended: Filed Sept. 6, 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 Dept. of Social Services, Family Support Division, 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. No public hearing is scheduled.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 30—Division of [Health Standards and Licensure] Regulation and Licensure
Chapter 20—Hospitals

PROPOSED AMENDMENT

19 CSR 30-20.011 Definitions Relating to Hospitals. The department proposes to add sections (2), (19), (38), and (39) and renumber for consistency.

PURPOSE: This amendment adds definitions for infection control officer, root cause analysis, and sentinel event which are needed to implement new hospital requirements regarding infection control imposed by the Missouri Nosocomial Infection Control Act of 2004 as included in Senate Bill No. 1279 passed by the Second Regular Session of the 92nd General Assembly. The amendment also adds a definition for anesthesiologist assistant, as included in HB 390 passed by the First Regular Session of the 92nd General Assembly.

(2) Anesthesiologist assistant—A person who meets each of the following conditions:

(A) Has graduated from an anesthesiologist assistant program accredited by the American Medical Association's Committee on Allied Health Education and Accreditation or by its successor agency;

(B) Has passed the certifying examination administered by the National Commission on Certification of Anesthesiologist Assistants;

(C) Has active certification by the National Commission on Certification of Anesthesiologist Assistants; and

(D) Provides health care services delegated by a licensed anesthesiologist.

[[2]] (3) Anesthetizing location—An area or room in which it is intended to administer any flammable or nonflammable inhalation anesthetic agents in the course of examination or treatment.

[[3]] (4) APLS—The American College of Emergency Physician's advanced pediatric life support program. APLS may be used interchangeably with PALS where required.

[[4]] (5) ATLS—The American College of Surgeon's advanced trauma life support program.

[[5]] (6) Authenticate—To prove authorship, for example, by written signature, identifiable initials or computer key. The use of rubber stamp signatures is acceptable only under the following conditions:

(A) The individual whose signature the rubber stamp represents is the only one who has possession of the stamp and is the only one who uses it; and

(B) The individual places in the administrative office of the hospital, with a copy to the medical records director, a signed statement to the effect that s/he is the only one who has the stamp and is the only one who will use it.

[[6]] (7) Biological safety cabinet—A containment unit suitable for the preparation of low to moderate risk agents where there is a need for protection of the product, personnel and environment, according to National Safety Foundation, Standard 49.

[[7]] (8) Board-admissible—That a physician has applied to a specialty board and has received a ruling that s/he has fulfilled the requirements to take the certification examinations. Board certification must be obtained within five (5) years after completion of the residency.

[[8]] (9) Board-certified—That a physician has fulfilled all requirements, has satisfactorily completed all written and oral examinations and has been awarded a board diploma in a specialty field.

[[9]] (10) Certified registered nurse anesthetist—A registered nurse who has graduated from a school of nurse anesthesia accredited by the Council on Accreditation of Educational Programs of Nurse Anesthesia or its predecessor and has been certified or is eligible for certification as a nurse anesthetist by the Council on Certification of Nurse Anesthetists.

[[10]] (11) Chief executive officer—The individual appointed by the governing body to act in its behalf in the overall management of the hospital. Job titles may include administrator, superintendent, director, executive director, president, vice president and executive vice president.

[[11]] (12) Chief operating officer—The individual appointed by the chief executive officer on behalf of the governing body or the individual who is responsible for the management of one (1) hospital in a multi-hospital organization under the direction of the chief executive officer of the organization.

[[12]] (13) Class II biological safety cabinet—A ventilated cabinet for personnel, product and environmental protection having an open front with inward airflow for personnel protection, high-efficiency-particulate-air (HEPA)-filtered laminar airflow for product protection and HEPA-filtered exhausted air for environmental protection.

[[13]] (14) Class 100 environment—An atmospheric environment which contains less than one hundred (100) particles five-tenths (0.5) microns or larger in diameter per cubic foot of air, according to federal standard 209E.

[[14]] (15) Dentist—An individual who has received a Doctor of Dental Surgery or Doctor of Dental Medicine degree and is currently licensed to practice dentistry in Missouri.

[[15]] (16) Department—Missouri Department of Health and Senior Services.

[[16]] (17) Hospital emergency transfer policy—A document that represents the usual and customary practices of a hospital with respect to the transfer of patients. The department uses objective indicators of patient status in relation to hospital capabilities to identify general classifications of patients who should be considered for transfer to a hospital with the necessary capabilities, and indicates the general classifications of patients the hospital has the capabilities to receive through emergency transfer from another hospital. The hospital emergency transfer policy does not supersede the authority of a physician to determine whether patients should be transferred on

a case-by-case basis, but serves as an institutional baseline to assist physician staff in providing consistent care decisions and is utilized for quality assurance review.

[(17)] (18) Independent licensed practitioner—An individual who is a graduate of a professional school and is licensed to practice as a health care provider in Missouri.

(19) Infection control officer—An individual who is a licensed physician, licensed registered nurse, has a bachelor's degree in laboratory science or has similar qualifications and has additional training or education preparation in infection control, infectious diseases, epidemiology and principles of quality improvement.

[(18)] (20) Infectious waste—Waste capable of producing an infectious disease. For a waste to be infectious, it must contain pathogens with sufficient virulence and quantity so that exposure to the waste by a susceptible host could result in an infectious disease. Infectious waste shall include the following categories:

(A) Blood and blood products—All human blood and blood products including serum, plasma and other components known or suspected to be contaminated with a transmissible infectious agent;

(B) Contaminated surgical, dialysis and laboratory wastes—Wastes generated by surgery, dialysis and laboratory departments in the process of caring for hospital patients who have communicable diseases capable of being transmitted to others via those wastes;

(C) Cultures and stocks of infectious agents and associated biologicals—Cultures and stocks of infectious agents shall be designated as infectious waste because of the high concentrations of pathogenic organisms typically present in these materials. Included in this category are all cultures and stocks of infectious organisms as well as culture dishes and devices used to transfer, inoculate and mix cultures. Also included are animal carcasses, body parts and bedding from animals contaminated with infectious agents;

(D) Isolation wastes—Wastes generated by hospitalized patients who have communicable diseases capable of being transmitted to others via those wastes;

(E) Pathology wastes—Autopsy wastes which consist of tissues, organs, body parts and body fluids that are removed during surgery and autopsy. All these wastes shall be considered infectious waste; and

(F) Sharps—All discarded sharps including hypodermic needles, syringes and scalpel blades. Broken glass or other sharp items that have come in contact with material defined as infectious are included.

[(19)] (21) Inpatient—A person admitted into a hospital by a member of the medical staff for diagnosis, treatment or care.

[(20)] (22) Medical services—Those preventive, diagnostic and therapeutic measures performed by, or at the request of, members of the medical staff or an independent licensed practitioner in outpatient services.

[(21)] (23) Operator—Shall mean any person as defined by section 197.020, RSMo who is licensed or required to be licensed under the provisions of sections 197.020–197.120, RSMo to establish, conduct or maintain a hospital. The term person shall mean any person determined by the department to have the following:

(A) Ultimate responsibility for making and implementing decisions regarding the operation of the hospital; and

(B) Ultimate financial control of the operation of the hospital.

[(22)] (24) PALS—The American Heart Association's pediatric advanced life support program. PALS may be used interchangeably with APLS where required.

[(23)] (25) Pharmacist—An individual who is a graduate of a school or college of pharmacy and is currently licensed to practice pharmacy in Missouri.

[(24)] (26) Physician—An individual who has received a Doctor of Medicine or Doctor of Osteopathy degree and is currently licensed to practice medicine in Missouri.

[(25)] (27) Podiatrist—An individual who has received a Doctor of Podiatric Medicine degree and is currently licensed to practice podiatry in Missouri.

[(26)] (28) Psychologist—An individual who is currently licensed by the State Committee of Psychologists under the provisions of Chapter 337, RSMo.

[(27)] (29) Qualified dietitian—An individual who is registered by the Commission on Dietetic Registration of the American Dietetic Association or who has the documented equivalent in education, training and experience, with evidence of relevant continuing education.

[(28)] (30) Qualified medical record administrator—A registered record administrator who has successfully passed an appropriate examination conducted by the American Medical Record Association or who has the document equivalent in education and training.

[(29)] (31) Qualified medical record technician—An accredited record technician who has successfully passed the appropriate accreditation examination conducted by the American Medical Record Association or who has the documented equivalent in education and training.

[(30)] (32) Qualified occupational therapist—An individual who is a graduate of an occupational therapy program approved by a nationally recognized accrediting body, or who currently holds certification by the American Occupational Therapy Association as an occupational therapist or who has the documented equivalent in training or experience and is currently competent in the field.

[(31)] (33) Qualified physical therapist—An individual who is licensed to practice professional physical therapy in Missouri.

[(32)] (34) Qualified radiologic technologist—An individual who is a graduate of a program in radiologic technology approved by the Council on Medical Education of the American Medical Association or who has the documented equivalent in education and training.

[(33)] (35) Qualified social worker—A licensed clinical social worker or a person who has a bachelor's degree in social work or a master's degree in social work.

[(34)] (36) Registered nurse—An individual who is a graduate of an approved school of nursing and who is licensed to practice as a registered nurse in Missouri.

[(35)] (37) Registered or certified respiratory therapist—An individual who has been registered or certified by the National Board for Respiratory Therapy, Inc. after successfully completing all education, experience and examination requirements or an individual who has been registered or certified prior to November 11, 1982, by an organization acceptable to the Department of Health and Senior Services.

(38) Root cause analysis—A process for identifying the basic or causal factor(s) that underlie variation in performance, including the occurrence or possible occurrence of a sentinel event.

(39) Sentinel event—An unexpected occurrence involving death or serious physical or psychological injury, or the risk thereof.

Serious injury specifically includes loss of limb or function. The phrase “or the risk thereof” includes any process variation for which a recurrence would carry a significant chance of a serious adverse outcome.

[(36)] (40) Special care unit—An appropriately equipped area of the hospital where there is a concentration of physicians, nurses and others who have special skills and experience to provide optimal medical care for critically ill patients.

[(37)] (41) Transfer agreement—A document which sets forth the rights and responsibilities of two (2) hospitals regarding the inter-hospital transfer of patients.

[(38)] (42) Unit—A functional division or facility of the hospital.

[(39)] (43) Diversion—a plan to temporarily close a hospital emergency department to ambulance traffic. This may be due to the emergency department being overwhelmed with significantly critically ill or injured patients, or an overwhelming number of minor emergency patients, to the extent that the hospital is unable to provide quality care or protect the health or welfare of the patients it serves. A diversion also may be implemented if the hospital has resource limitations, such as, no available beds in specialty care units or general acute care, no surgical suites or shortages of equipment or personnel.

(A) Defined service area—The geographic area served by a defined group of hospitals and emergency services. In areas where there is a community-based emergency medical services diversion plan, the service area(s) defined as the catchment area by the plan will be the defined service area(s). In areas where there is not a community-based emergency medical services diversion plan, the defined service area will be a twenty (20)-mile radius from a hospital.

[(40)] (44) Immediate and serious threat—Having caused, or is likely to cause, serious injury, harm, impairment, or death to a patient.

AUTHORITY: sections 192.006, 197.080 and 197.293, RSMo 2000 and 197.154, RSMo Supp. 2004. This rule was previously filed as 13 CSR 50-20.011. Original rule filed June 2, 1982, effective Nov. 11, 1982. For intervening history, please consult the Code of State Regulations. Amended: Filed Sept. 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 the Department of Health and Senior Services, Division of Regulation and Licensure, David S. Durbin, Director, 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 30—Division of [Health Standards and Licensure] Regulation and Licensure
Chapter 30—Ambulatory Surgical Centers

PROPOSED AMENDMENT

19 CSR 30-30.010 Definitions and Procedures for Licensing Ambulatory Surgical Centers. The department proposes to add

new subsections and to amend section (1) by relettering all definitions in alphabetical order.

PURPOSE: This amendment adds definitions for infection control officer, root cause analysis, and sentinel event which are needed to implement new hospital requirements regarding infection control imposed by the Missouri Nosocomial Infection Control Act of 2004 as included in Senate Bill No. 1279 passed by the Second Regular Session of the 92nd General Assembly. The amendment also adds a definition for anesthesiologist assistant, as included in HB 390 passed by the First Regular Session of the 92nd General Assembly.

(1) Definitions.

[(A) Ambulatory surgical center. Any public or private establishment operated primarily for the purpose of performing surgical procedures or primarily for the purpose of delivering newborns, and which does not provide services or other accommodations for patients to stay more than twelve (12) hours within the establishment. However, nothing in this definition shall be construed to include the offices of dentists currently licensed under Chapter 332, RSMo 1986.

1. A facility operated primarily for the purpose of performing surgical procedures is one that provides surgical services to fifty-one percent (51%) or more of the patients treated or seen for any health condition, or one that derives fifty-one percent (51%) or more of its revenues from the provision of surgical services or related procedures.

2. The term ambulatory surgical center does not apply to any facility licensed as part of a hospital or any facility used as an office or clinic for the private practice of a physician, dentist or podiatrist.

3. A facility licensed as an ambulatory surgical center shall not use the term hospital in the name of the facility without approval of the Department of Health.

(B) Physician means a person licensed to practice medicine pursuant to Chapter 334, RSMo and who has active or associate staff membership and privileges in a licensed hospital in the community.

(C) Dentist means a person licensed to practice dentistry pursuant to Chapter 332, RSMo.

(D) Department means the Department of Health.

(E) Governmental unit means any city, county or other political subdivision of this state, or any department, division, board or other agency of any political subdivision of this state.

(F) Podiatrist means a person licensed to practice podiatry pursuant to Chapter 330, RSMo.

(G) Administrator means a person who is delegated the responsibility of carrying out the policies and programs established by the governing body.]

(A) Administrator means a person who is delegated the responsibility of carrying out the policies and programs established by the governing body.

(B) Ambulatory surgical center. Any public or private establishment operated primarily for the purpose of performing surgical procedures or primarily for the purpose of delivering newborns, and which does not provide services or other accommodations for patients to stay more than twelve (12) hours within the establishment. However, nothing in this definition shall be construed to include the offices of dentists currently licensed under Chapter 332, RSMo.

1. A facility operated primarily for the purpose of performing surgical procedures is one that provides surgical services to fifty-one percent (51%) or more of the patients treated or seen for any health condition, or one that derives fifty-one percent (51%) or more of its revenues from the provision of surgical services or related procedures.

2. The term ambulatory surgical center does not apply to any facility licensed as part of a hospital or any facility used as an office or clinic for the private practice of a physician, dentist or podiatrist.

3. A facility licensed as an ambulatory surgical center shall not use the term hospital in the name of the facility without approval of the Department of Health and Senior Services.

(C) Anesthesiologist. A physician licensed under Chapter 334, RSMo who has successfully completed a postgraduate medical education program in anesthesiology approved by the Accreditation Council on Graduate Medical Education or the American Osteopathic Association.

(D) Anesthesiologist assistant. A person who meets each of the following conditions:

1. Has graduated from an anesthesiologist assistant program accredited by the American Medical Association's Committee on Allied Health Education and Accreditation or by its successor agency;

2. Has passed the certifying examination administered by the National Commission on Certification of Anesthesiologist Assistants;

3. Has active certification by the National Commission on Certification of Anesthesiologist Assistants; and

4. Provides health care services delegated by a licensed anesthesiologist.

(E) Certified nurse anesthetist. A registered nurse licensed under Chapter 335, RSMo who has been graduated from a school of nurse anesthesia accredited by the Council on Accreditation of Educational Programs of Nurse Anesthesia or its predecessor, and is certified or is eligible for certification as a nurse anesthetist by the Council on Certification of Nurse Anesthetists.

(F) Dentist means a person licensed to practice dentistry pursuant to Chapter 332, RSMo.

(G) Department means the Department of Health and Senior Services.

(H) Governing body means an individual owner, partnership, corporation or other legally established authority in whom the ultimate authority and responsibility for management of the ambulatory surgical center is vested.

(I) Medical staff. A formal organization of physicians which may include dentists and podiatrists who are appointed by the governing body to attend patients within the ambulatory surgical center.

(J) Patient. A person admitted to the ambulatory surgical center by and upon the order of a physician, or dentist, or podiatrist in accordance with the orders of a physician.

(I) Governmental unit means any city, county or other political subdivision of this state, or any department, division, board or other agency of any political subdivision of this state.

(J) Infection control officer. An individual who is a licensed physician, licensed registered nurse, has a bachelor's degree in laboratory science, or has similar qualifications and has additional training or educational preparation in infection control, infectious diseases, epidemiology and principles of quality improvement.

(K) Licensed practical nurse (LPN). A person who holds a valid license issued by the State Board of Nursing pursuant to Chapter 335, RSMo.

(L) Registered nurse (RN). A person who holds a valid license issued by the State Board of Nursing pursuant to Chapter 335, RSMo.

(M) Person. Any individual, firm, partnership, corporation, company or association, or the legal successors of any of them.

(N) Certified nurse anesthetist. A registered nurse licensed under Chapter 335, RSMo (1986), who has been graduated from a school of nurse anesthesia accredited by the Council

on Accreditation of Educational Programs of Nurse Anesthesia or its predecessor, and is certified or is eligible for certification as a nurse anesthetist by the Council on Certification of Nurse Anesthetists.

(O) Physician with training or experience in the administration of anesthetics. A person licensed to practice medicine under Chapter 334, RSMo 1986 whose training and experience (credentials) have been evaluated by the medical staff and privileges granted to direct the anesthesia service or to administer anesthetics or both.

(P) Qualified anesthesia personnel. An anesthesiologist who is a physician with training or experience in the administering of anesthetics or a certified registered nurse anesthetist.

(Q) Anesthesiologist. A physician licensed under Chapter 334, RSMo 1986, who has successfully completed a postgraduate medical education program in anesthesiology approved by the Accreditation Council on Graduate Medical Education or the American Osteopathic Association.]

(L) Medical staff. A formal organization of physicians which may include dentists and podiatrists who are appointed by the governing body to attend patients within the ambulatory surgical center.

(M) Patient. A person admitted to the ambulatory surgical center by and upon the order of a physician, or dentist, or podiatrist in accordance with the orders of a physician.

(N) Person. Any individual, firm, partnership, corporation, company or association, or the legal successors of any of them.

(O) Physician means a person licensed to practice medicine pursuant to Chapter 334, RSMo and who has active or associate staff membership and privileges in a licensed hospital in the community.

(P) Physician with training or experience in the administration of anesthetics. A person licensed to practice medicine under Chapter 334, RSMo whose training and experience (credentials) have been evaluated by the medical staff and privileges granted to direct the anesthesia service or to administer anesthetics or both.

(Q) Podiatrist means a person licensed to practice podiatry pursuant to Chapter 330, RSMo.

(R) Qualified anesthesia personnel. An anesthesiologist who is a physician with training or experience in the administering of anesthetics or a certified registered nurse anesthetist.

(S) Registered nurse (RN). A person who holds a valid license issued by the State Board of Nursing pursuant to Chapter 335, RSMo.

(T) Root cause analysis. A process for identifying the basic or causal factor(s) that underlie variation in performance, including the occurrence or possible occurrence of a sentinel event.

(U) Sentinel event. An unexpected occurrence involving death or serious physical or psychological injury, or the risk thereof. Serious injury specifically includes loss of limb or function. The phrase "or the risk thereof" includes any process variation for which a reoccurrence would carry a significant chance of a serious adverse outcome.

AUTHORITY: sections 197.225, RSMo [1986] and 197.154, RSMo Supp. 2004. This rule was previously filed 13 CSR 50-30.010. Original rule filed [as] Dec. 2, 1975, effective Feb. 1, 1976. Amended: Filed Jan. 3, 1990, effective April 12, 1990. Amended: Filed Sept. 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 the Department of Health and Senior Services, Division of Regulation and Licensure, David S. Durbin, Director, 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 30—Division of [Health Standards and Licensure] Regulation and Licensure
Chapter 30—Ambulatory Surgical Centers

PROPOSED AMENDMENT

19 CSR 30-30.020 Administration Standards for Ambulatory Surgical Centers. The department proposes to amend paragraphs (1)(E)6., (1)(K)1. and (1)(K)4.; add paragraphs (1)(C)9., (1)(K)2. and (1)(K)3.; and renumber for consistency.

PURPOSE: This amendment sets forth the amended ambulatory surgical center requirements regarding infection control imposed by the Missouri Nosocomial Infection Control Act of 2004 as included in Senate Bill No. 1279 passed by the Second Regular Session of the 92nd General Assembly. The amendment also sets forth amended ambulatory surgical center requirements regarding overtime for nurses and administration of anesthesia by anesthesiologist assistants.

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) Organization, Administration, Medical Staff, Nursing Staff and Supporting Services.

(C) Nursing Services.

1. There shall be an organized nursing service under the direction of a professional RN with postgraduate education or experience in surgical nursing.

2. There shall be at least one (1) professional RN on duty in the ambulatory surgical center at all times a patient is in the facility.

3. Written policies and procedures consistent with generally accepted nursing practices are to be developed for the direction and guidance of nursing personnel.

4. All licensed practical nurses and other nursing personnel involved in patient care shall be under the direct supervision of a professional RN.

5. At least one (1) professional RN other than the individual administering anesthesia shall be available in each operating room during surgical procedures.

6. At least one (1) RN shall be in the recovery room during the patients' postanesthetic recovery period at a ratio of no more than four (4) patients to one (1) nurse.

7. Nursing personnel are to be familiar with the location, operation and use of electrocardiogram (EKG or ECG) equipment, pulse oximeter, blood pressure equipment and emergency and resuscitative equipment.

8. There shall be a mechanism for the review and evaluation on a regular basis of the quality and appropriateness of nursing services.

9. Policies shall be developed regarding the use of overtime. The policies shall be based on the following standards:

A. Overtime shall not be mandated for any licensed nursing personnel except when an unexpected nurse staffing shortage arises that involves a substantial risk to patient safety, in which case a reasonable effort must be applied to secure safe staffing before requiring the on-duty licensed nursing personnel to work overtime. Reasonable efforts undertaken shall be verified by the ambulatory surgical center. Reasonable efforts shall include pursuing all of the following:

(I) Reassigning on-duty staff;

(II) Seeking volunteers to work extra time from all available qualified nursing staff who are presently working;

(III) Contacting qualified off-duty employees who have made themselves available to work extra time, per diem staff, float pool and flex team nurses; and

(IV) Seeking personnel from a contracted temporary agency when such staffing is permitted by law or an applicable collective bargaining agreement and when the employer regularly uses a contracted temporary agency;

B. In the absence of nurse volunteers, float pool nurses, flex team nurses or contracted temporary agency staff or if qualified reassignments cannot be made, the ambulatory surgical center may require the nurse currently providing the patient care to fulfill his or her obligations based on the Missouri Nurse Practice Act by performing the patient care which is required;

C. The prohibition of mandatory overtime does not apply to overtime work that occurs because of an unforeseeable emergency or when an ambulatory surgical center and a subsection of nurses commit, in writing, to a set, predetermined staffing schedule or prescheduled on-call time. An unforeseeable emergency is defined as a period of unusual, unpredictable or unforeseeable circumstances such as, but not limited to, an act of terrorism, a disease outbreak, adverse weather conditions, or natural disasters which impact patient care and which prevent replacement staff from reporting for duty;

D. The facility is prohibited from requiring a nurse to work additional consecutive hours and from taking action against a nurse on the grounds that a nurse failed to work the additional hours or when a nurse declines to work additional consecutive hours beyond the nurse's predetermined schedule of hours because doing so may, in the nurse's judgement, jeopardize patient safety;

E. Subparagraph 19 CSR 30-30.020(1)(C)9.D. is not applicable if overtime is permitted under subparagraphs 19 CSR 30-30.020(1)(C)9.A., B., and C; and

F. Nurses required to work more than twelve (12) consecutive hours under subparagraphs 19 CSR 30-30.020(1)(C)9.A., B., or C. shall be provided the option to have at least ten (10) consecutive hours of uninterrupted off-duty time immediately following the worked time.

(E) Anesthesia Service.

1. The anesthesia service shall be under the direction of an anesthesiologist or a physician with training or experience in the administration of anesthetics. The clinical privileges of qualified anesthesia personnel shall be reviewed by the director of anesthesia service and the medical staff and approved by the governing body.

2. An anesthesiologist or physician with training or experience in the administration of anesthetics shall be on the premises and readily accessible during the administration of anesthetics whether local, general or intravenous sedation and the postanesthetic recovery period until all patients are alert or medically discharged. Qualified anesthesia personnel shall be present in the room throughout the conduct of all general anesthetics, regional anesthetics and monitored anesthesia care and shall continually evaluate the patient's oxygenation, ventilation, circulation and temperature. Oxygen analyzers, pulse oximeter and electrocardiography equipment shall be available.

3. Policies and procedures on the administration of anesthetics and drugs which produce conscious and deep sedation shall be developed by the medical staff in consultation with at least one (1) anesthesiologist and approved by the governing body.

4. Prior to undergoing general anesthesia, patients shall have a history and physical examination by a physician on the patient's record including the results of any necessary laboratory examinations. Each administration of a regional, general or intravenous sedation anesthetic shall be ordered by an anesthesiologist or a physician with training and experience in the administration of anesthetics. The patient records shall contain a preanesthetic evaluation and a postanesthetic note by qualified anesthesia personnel.

5. Periodic inspections shall be made of all areas where flammable anesthetics are administered or stored to insure safeguards are being observed by personnel and equipment meets safety standards. A written record of inspections shall be kept. If the administration of the facility provides written assurance to the Department of Health and Senior Services that no flammable anesthetics will be administered and the area is posted to that effect, safety inspections will not be required.

6. All anesthetics shall be administered by anesthesiologists, physicians with training or experience in the administration of anesthetics, *[or]* certified registered nurse anesthetists or **anesthesiologist assistants**, except for local anesthetic agents which may be administered by the attending physician, dentist or podiatrist. **Notwithstanding the provisions of sections 334.400 to 334.430, RSMo, or the rules of the Missouri State Board of Registration for the Healing Arts, the governing body of every ambulatory surgical center shall have full authority to limit the functions and activities that an anesthesiologist assistant performs in such ambulatory surgical center. Nothing in this paragraph shall be construed to require any ambulatory surgical center to hire an anesthesiologist who is not already employed as a physician prior to August 28, 2003.**

7. Written procedures and criteria for discharge from the recovery service shall be approved by the medical staff.

8. There shall be a mechanism for the review and evaluation on a regular basis of the quality and scope of anesthesia services.

(K) Infection Control.

1. There shall be an active multidisciplinary infection control committee responsible for implementing and monitoring the infection control program. *[This] The committee shall include, [a person assigned primary responsibility for the program as well as medical staff participation and review of findings.] but not be limited to, the infection control officer, a member of the medical staff, registered professional nursing staff, quality improvement staff and administration. [The] This program shall include measures for [presenting.] preventing, identifying, and investigating[,] healthcare-associated infections and shall establish procedures for: collecting data, conducting root cause analysis, reporting sentinel events and [controlling infections.] implementing corrective actions. These measures and procedures shall be applied throughout the ambulatory surgical center, included as part of the employee health program.*

2. The ambulatory surgical center shall provide reports to the department as required by 19 CSR 10-33.050.

3. The infection control committee shall conduct an ongoing review and analysis of healthcare-associated infections (HAI) data and risk factors. Priorities and goals related to preventing the acquisition and transmission of potentially infectious agents will be established based on risks identified.

[2.]4. [Approved] Ambulatory surgical centers shall implement written policies and procedures outlining infection control measures[, aseptic techniques and a] for all patient care and support departments. These measures shall include, but are not limited to, an ambulatory surgical center-wide hand hygiene program that complies with the current Center for Disease Control and Prevention (CDC) Guideline for Hand Hygiene in Health-Care Settings, which is incorporated by reference in this rule. A copy of the CDC Guideline for Hand Hygiene in Health-Care Settings may be obtained from the Superintendent of Documents, U.S. Government Printing Office (GPO), Washington, DC

20402-9371; telephone: (202) 512-1800. This rule does not incorporate any subsequent amendments or additions. At a minimum, the program shall require every health care worker to properly wash or sanitize his or her hands immediately before and immediately after each and every patient contact. Procedures shall include, at a minimum, requirements for the facility's infection control program to conduct surveillance of personnel. At least a portion of this surveillance must be done in such a manner that employees and medical staff are observed without their knowledge of such observation. Surveillance procedures also may include monitoring the employees' and medical staff's use of hand hygiene products. A mechanism for reporting and monitoring infections shall be developed[,] and implemented for all patient care and support departments in the ambulatory surgical center.

[3.] 5. Orientation and ongoing education shall be provided to all personnel on the cause, effect, transmission and prevention of infections.

[4.] 6. There shall be a mechanism for the review and evaluation on a regular basis of the quality and effectiveness of infection control throughout the facility.

AUTHORITY: section 197.225, RSMo [1986] 2000 and 197.154, RSMo Supp. 2004. This rule was previously filed as 13 CSR 50-30.020. Original rule filed Dec. 2, 1975, effective Feb. 1, 1976. Amended: Filed June 14, 1988, effective Oct. 13, 1988. Amended: Filed Jan. 3, 1990, effective April 12, 1990. Amended: Filed Sept. 20, 2005.

PUBLIC COST: This proposed amendment will cost state agencies and political subdivisions an annual cost of twenty thousand one hundred fifty-six dollars (\$20,156) in the aggregate.

PRIVATE COST: This proposed amendment will cost private entities an annual cost of six hundred ninety-three thousand two hundred thirty-two dollars (\$693,232) and a one time cost of two hundred fifty-eight thousand dollars (\$258,000) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Health and Senior Services, Division of Regulation and Licensure, David S. Durbin, Director, 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 ENTITY COST

I. RULE NUMBER

Title: 19 Department of Health and Senior Services

Division: 30 Division of Regulation and Licensure

Chapter: 30 Ambulatory Surgical Centers

Type of Rule Making: Proposed Amendment

Rule Number and Name: 19 CSR 30-30.020 - Administration Standards for Ambulatory Surgical Centers

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Department of Health and Senior Services	\$20,156 annually

III. WORKSHEET

86 ambulatory surgical centers X 7.5 additional hours per inspection X \$31.25 hourly rate for inspection staff (includes fringe) \$20,156 annually

IV. ASSUMPTIONS

DEPARTMENT OF HEALTH AND SENIOR SERVICES COSTS

The DHSS estimates that these regulatory changes would result in adding an average of 7.5 additional hours of inspection time for each of the 86 ambulatory surgical centers. This additional time for inspections includes write-up and follow-up time in addition to the additional time at the facility. These changes will result in the need for an additional 645 hours of employee time. The estimated hourly rate of inspection staff is \$21.95. Factoring in fringe benefits at 42.38% gives an hourly rate of \$31.25. Additional inspection costs are therefore estimated at \$20,156 annually.

This estimate does not include the investigation of any complaints that might be reported as a result of the regulatory changes. It is impossible to estimate the number of possible complaints or the amount of time they might take to investigate.

**FISCAL NOTE
PRIVATE ENTITY COST**

I. RULE NUMBER

Title: 19 – Department of Health and Senior Services

Division: 30 – Division of Regulation and Licensure

Chapter: 30 – Ambulatory Surgical Centers

Type of Rule Making: Proposed Amendment

Rule Number and Name: 19 CSR 30-30.020 - Administration Standards for Ambulatory Surgical Centers

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.
86	State Licensed Ambulatory Surgical Centers	\$951,232 (\$258,000 + \$693,232) the first year and \$693,232 annually thereafter

III. WORKSHEET

Type of Cost	# of Hospitals Affected	Cost per Hospital	One-time Cost	Annual Cost
Nosocomial Infections:				
Develop/revise policies/procedures & education	86	\$2,500	\$215,000	--
Compensation/education of infection control officer	86	\$7,500	--	\$645,000
Conducting root cause analysis	86	\$500	--	\$43,000
Monitoring hand-washing compliance	86	--	--	\$5,232
Overtime for Nurses	86	\$500	\$43,000	--
Anesthesiologist Assistants	--	--	--	--
TOTAL			\$258,000	\$693,232

IV. ASSUMPTIONS

There are eighty-six (86) state licensed ambulatory surgical centers (ASC). All the licensed ASCs are private entities.

The Department of Health and Senior Services contacted 10% of the 86 licensed ASCs (9 facilities) to obtain information on number of employees. We obtained an average facility number based on this sample which we applied to the entire universe of 86 ASCs.

The proposed amendment includes three components:

1. **Nosocomial infection requirements:**

One-time costs: ASCs would incur a one-time cost to develop and/or revise policies and procedures to meet the requirements of the amended rule as well as educate staff and physicians about the changes. We estimate these costs would average \$2,500 per facility.

Annual costs: ASCs would incur annual costs related to compensation and education of an infection control officer and for additional staff to conduct root cause analysis and monitor compliance with hand-washing requirements.

Additional compensation and education for an infection control officer: We estimate the cost at \$7,500 per ASC.

Conducting root cause analysis: We estimate that all 86 licensed ASCs would need additional training on root cause analysis at a cost of approximately \$500 annually per ASC. The assumption is made that the actual root cause analysis function would be performed by the infection control officer and the infection control committee. The current regulatory requirements for ASCs already require that there be an active multidisciplinary infection control program, so no additional costs, other than training, are assumed.

Monitoring compliance with hand-washing requirements: A randomly selected sample of 10% of the 86 licensed ASCs (9 facilities) was contacted by telephone. This sample indicated an average of 15.89 physician/dentist/podiatrist staff at each facility. If applied to the entire number of 86 licensed ASCs, this results in 1,367 physician/dentist/podiatrist staff. The sample indicated an average of 8.44 licensed nursing personnel for an estimated 726 total. The sample indicated an average of .2 certified, but unlicensed, patient care personnel, for an estimated total of 17. The sample indicated an average of 2.22 unlicensed and uncertified patient care staff, for an estimated 191 total. The estimated grand total of patient care staff for all 86 ASCs is 2,301. If 50 percent or 1,151 of these staff were observed once during the year for 10 minutes each, an estimated 192 additional staff hours would be required to conduct hand washing surveillance ((1,151 staff observed X 10 minutes)/60 minutes per hour). The average hourly rate for a staff RN, per MHA's 2004 annual compensation survey is \$21.80; including an additional 25 percent for benefits would give an hourly rate of \$27.25 for a total annual observation cost for all 86 ASC's of \$5,232.

2. **Overtime for nurses:**

ASCs would incur a one-time cost to revise their nursing policies regarding overtime and to educate staff in order to comply with the proposed amendment. We estimate a one-time average cost of \$500 per ASC.

Per information obtained from the Missouri Ambulatory Surgery Center Association, overtime is not widely used in ambulatory surgery centers. Therefore, it is believed that the annual cost to meet the requirements specified in the rule, whether through the ASC's own staff or through staffing agencies, is either \$0 for those facilities that do not use overtime or is already being incurred by the ASCs, and the proposed amendment would not increase the cost.

3. **Anesthesiologist Assistants**

The proposed amendment provides ASCs with the ability to allow anesthesiologist assistants to administer anesthesia, if an ASC so chooses. Since there is no requirement that the ASC do so, there is no cost associated with the amendment.

**Title 20—DEPARTMENT OF INSURANCE
Division 700—Licensing
Chapter 1—Insurance Producers**

PROPOSED AMENDMENT

20 CSR 700-1.010 Insurance Producers' Examination and Licensing Procedures and Standards. The department is amending sections (2) and (5) of this rule.

PURPOSE: This amendment clarifies the process of payment of fees associated with the licensure renewal process.

(2) Application Required.

(C) All fees must be paid by money order, cashier's check, company check or business entity check. **Fees for electronic applications may be paid by credit card or electronic funds transfer.** No fee shall be refundable.

(5) The biennial renewal fee for an insurance producer's license is one hundred dollars (\$100). An insurance producer's license shall be renewed biennially on the anniversary date of issuance and continue in effect until refused, revoked or suspended by the director in accordance with section 375.141, RSMo. If the biennial renewal fee for the license is not paid by the expiration date the license terminates. **All fees must be paid by money order, cashier's check, company check or business entity check. Fees for electronic renewals may be paid by credit card or electronic funds transfer. No fee shall be refundable.**

AUTHORITY: section 374.045, RSMo 2000. This rule was previously filed as 4 CSR 190-12.020. Original rule filed Aug. 5, 1974, effective Aug. 15, 1974. For intervening history, please consult the *Code of State Regulations*. Amended: Filed Sept. 15, 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 OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing will be held on this proposed amendment at 10 a.m. on November 22, 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 this proposed amendment, until 5:00 p.m. on November 22, 2005. Written statements shall be sent to Carrie Couch, 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.

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

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

**Title 1—OFFICE OF ADMINISTRATION
Division 15—Administrative Hearing Commission
Chapter 3—Procedure for All Contested Cases Under
Statutory Jurisdiction**

ORDER OF RULEMAKING

By the authority vested in the Administrative Hearing Commission under section 621.198, RSMo Supp. 2004, the commission amends a rule as follows:

1 CSR 15-3.290 Filing of Documents; Fax Filing; Posting Bond is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on July 1, 2005 (30 MoReg 1437). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 1—OFFICE OF ADMINISTRATION
Division 15—Administrative Hearing Commission
Chapter 3—Procedure for All Contested Cases Under
Statutory Jurisdiction**

ORDER OF RULEMAKING

By the authority vested in the Administrative Hearing Commission under sections 621.053 and 621.198, RSMo Supp. 2004, the commission amends a rule as follows:

1 CSR 15-3.350 Complaints is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on July 1, 2005 (30 MoReg 1437-1438). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 1—OFFICE OF ADMINISTRATION
Division 15—Administrative Hearing Commission
Chapter 3—Procedure for All Contested Cases Under
Statutory Jurisdiction**

ORDER OF RULEMAKING

By the authority vested in the Administrative Hearing Commission under section 621.198, RSMo Supp. 2004, the commission amends a rule as follows:

1 CSR 15-3.380 Answers and Other Responsive Pleadings is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on July 1, 2005 (30 MoReg 1438). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 1—OFFICE OF ADMINISTRATION
Division 15—Administrative Hearing Commission
Chapter 3—Procedure for All Contested Cases Under
Statutory Jurisdiction**

ORDER OF RULEMAKING

By the authority vested in the Administrative Hearing Commission under section 621.198, RSMo Supp. 2004, the commission amends a rule as follows:

1 CSR 15-3.490 Hearings on Complaints; Default is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on July 1, 2005 (30 MoReg 1438). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 2—DEPARTMENT OF AGRICULTURE
Division 70—Plant Industries
Chapter 11—Missouri Plant Law Quarantines**

ORDER OF RULEMAKING

By the authority vested in the Missouri Department of Agriculture under section 263.130, RSMo 2000, the department adopts a rule as follows:

2 CSR 70-11.040 Bakanae of Rice Exterior Quarantine is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on July 1, 2005 (30 MoReg 1438-1440). No changes have been made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 35—Children’s Division
Chapter 80—Payment of Residential Facilities**

ORDER OF RULEMAKING

By the authority invested in the Children’s Division under section 207.020, RSMo 2000, the director amends a rule as follows:

13 CSR 35-80.020 Residential Care Agency Cost Reporting System is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on July 15, 2005 (30 MoReg 1540). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

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

ORDER OF RULEMAKING

By the authority vested in the director of the Division of Medical Services under section 208.201, RSMo 2000, the director hereby amends a rule as follows:

13 CSR 70-3.030 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on June 15, 2005 (30 MoReg 1345-1350). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Division of Medical Services (DMS) received approximately three (3) written comments on this proposed amendment.

COMMENT: There were two (2) comments received from the Missouri Health Care Association and the National Association of Chain Pharmacies that expressed concern about Medicaid provider manuals being incorporated by reference.

RESPONSE AND EXPLANATION OF CHANGE: Section (1) gives an effective date of June 15, 2005 and states it does not incorporate any subsequent amendments or additions. We understand that changes made to the manual must be amended pursuant to Chapter 536. Section (1) is being amended to eliminate the sentence that says, “The division reserves the right to affect changes in services, limitations, and fees with notification to providers.” Section (3) Program Violations, subsection (7) is also being amended to eliminate the sentence that says, “The division reserves the right to affect changes in services, limitations, and fees with notification to providers.”

COMMENT: There was one (1) comment received from the Missouri Health Care Association on section (2) pertaining to documentation requirements “at the time the service was performed or within seventy-two (72) hours of the time the service was provided” impacting the “Private Cost” of this amendment. The concern noted that long-term care facilities currently do not normally document “the need for these specific service(s) in relationship to the Medicaid recipient’s treatment plan . . .” and documentation of “the Medicaid recipient’s progress toward the goals stated in the treatment (progress notes). . . .” although they may be constructively contained in the entire medical record of the resident.

RESPONSE AND EXPLANATION OF CHANGE: Section (2) has been changed to replace paragraph (A)11. with the following statement, “Long-term care facilities shall be exempt from the seventy-two (72)-hour documentation requirements rules applying to paragraphs (2)(A)9. and (2)(A)10. However, applicable documentation should be contained and available in the entirety of the medical record.” The original paragraph (2)(A)11. is renumbered as (2)(A)12.

COMMENT: One (1) comment was received from the Missouri Health Care Association, which stated that the “state contract or agreement” should be limited to the “provider agreement” between the Department of Social Services, Division of Medical Services and the provider.

RESPONSE AND EXPLANATION OF CHANGE: Section (3), Program Violations paragraph (A)37. has been changed to recognize the provider agreement to be the Missouri Department of Social Services, Division of Medical Services Title XIX Participation Agreement with the provider.

COMMENT: One (1) comment was received from the Missouri Health Care Association concerning potential increases in private costs to long-term care facilities if section (2) was changed.

RESPONSE: Section (2) has been revised as described in a previous comment so this concern has been addressed.

COMMENT: One (1) comment was received from the National Association of Chain Pharmacies with the concern that a provision appears to bar reimbursement for pharmacy services rendered by a pharmacy practitioner acting under the direction or supervision of a pharmacist enrolled in the Medicaid program.

RESPONSE: Medicaid does not enroll individual pharmacists; the pharmacy is enrolled. No changes have been made to the rule as a result of this comment.

COMMENT: One (1) comment was received from the National Association of Chain Pharmacies with the concern that a provision would identify as a “false claim” a claim for a prescription dispensed for a higher number of units than is ordered by the prescribing provider, even if that prescription was subsequently modified by

mutual consent of the prescribing and dispensing providers due to the shortage or nonexistence of the prescribed dosage.

RESPONSE: Any change or alteration made to the prescription dispensed, based on contact with the prescriber, must show a clear audit trail. No changes have been made to the rule as a result of this comment.

13 CSR 70-3.030 Sanctions for False or Fraudulent Claims for Title XIX Services

(1) Administration. The Missouri Medicaid program shall be administered by the Department of Social Services, Division of Medical Services. The services covered and not covered, the limitations under which services are covered, and the maximum allowable fees for all covered services shall be determined by the division and shall be included in the Medicaid provider manuals, which are incorporated by reference and made a part of this rule as published by the Department of Social Services, Division of Medical Services, 615 Howerton Court, Jefferson City, MO 65102, at its website www.dss.mo.gov/dms, June 15, 2005. This rule does not incorporate any subsequent amendments or additions.

(2) The following definitions will be used in administering this rule:

(A) Adequate documentation means documentation from which services rendered and the amount of reimbursement received by a provider can be readily discerned and verified with reasonable certainty. Adequate medical records are records which are of the type and in a form from which symptoms, conditions, diagnosis, treatments, prognosis and the identity of the patient to which these things relate can be readily discerned and verified with reasonable certainty. All documentation must be made available at the same site at which the service was rendered. An adequate and complete patient record is a record which is legible, which is made contemporaneously with the delivery of the service, which addresses the patient/client specifics, which include, at a minimum, individualized statements that support the assessment or treatment encounter, and shall include documentation of the following information:

1. First name, and last name, and either middle initial or date of birth of the Medicaid recipient;
2. An accurate, complete, and legible description of each service(s) provided;
3. Name, title, and signature of the Missouri Medicaid enrolled provider delivering the service. Inpatient hospital services must have signed and dated physician or psychologist orders within the patient's medical record for the admission and for services billed to Missouri Medicaid. For patients registered on hospital records as outpatient, the patient's medical record must contain signed and dated physician orders for services billed to Missouri Medicaid. Services provided by an individual under the direction or supervision are not reimbursed by Missouri Medicaid. Services provided by a person not enrolled with Missouri Medicaid are not reimbursed by Missouri Medicaid;
4. The name of the referring entity, when applicable;
5. The date of service (month/day/year);
6. For those Medicaid programs and services that are reimbursed according to the amount of time spent in delivering or rendering a service(s) (except for services as specified under 13 CSR 70-91.010 Personal Care Program (4)(A)) the actual begin and end time taken to deliver the service (for example, 4:00-4:30 p.m.) must be documented;
7. The setting in which the service was rendered;
8. The plan of treatment, evaluation(s), test(s), findings, results, and prescription(s) as necessary. Where a hospital acts as an independent laboratory or independent radiology service for persons considered by the hospital as "nonhospital" patients, the hospital must have a written request or requisition slip ordering the tests or procedures;

9. The need for the service(s) in relationship to the Medicaid recipient's treatment plan;

10. The Medicaid recipient's progress toward the goals stated in the treatment plan (progress notes);

11. Long-term care facilities shall be exempt from the seventy-two (72)-hour documentation requirements rules applying to paragraphs (2)(A)9. and (2)(A)10. However, applicable documentation should be contained and available in the entirety of the medical record; and

12. For applicable programs it is necessary to have adequate invoices, trip tickets/reports, activity log sheets, employee records (excluding health records), and training records of staff;

(I) Participation means the ability and authority to provide services or merchandise to eligible Medicaid recipients and to receive payment from the Medicaid program for those services or merchandise;

(3) Program Violations.

(A) Sanctions may be imposed by the Medicaid agency against a provider for any one (1) or more of the following reasons:

1. Presenting, or causing to be presented, for payment any false or fraudulent claim for services or merchandise in the course of business related to Medicaid;

2. Submitting, or causing to be submitted, false information for the purpose of obtaining greater compensation than that to which the provider is entitled under applicable Medicaid program policies or rules, including, but not limited to, the billing or coding of services which results in payments in excess of the fee schedule for the service actually provided or billing or coding of services which results in payments in excess of the provider's charges to the general public for the same services or billing for higher level of service or increased number of units from those actually ordered or performed or both, or altering or falsifying medical records to obtain or verify a greater payment than authorized by a fee schedule or reimbursement plan;

3. Submitting, or causing to be submitted, false information for the purpose of meeting prior authorization requirements or for the purpose of obtaining payments in order to avoid the effect of those changes;

4. Failing to make available, and disclosing to the Medicaid agency or its authorized agents, all records relating to services provided to Medicaid recipients or records relating to Medicaid payments, whether or not the records are commingled with non-Title XIX (Medicaid) records. All records must be kept a minimum of five (5) years from the date of service unless a more specific provider regulation applies. The minimum five (5)-year retention of records requirement continues to apply in the event of a change of ownership or discontinuing enrollment in Medicaid. Services billed to the Medicaid agency that are not adequately documented in the patient's medical records or for which there is no record that services were performed shall be considered a violation of this section. Copies of records must be provided upon request of the Medicaid agency or its authorized agents, regardless of the media in which they are kept. Failure to make these records available on a timely basis at the same site at which the services were rendered or at the provider's address of record with the Medicaid agency, or failure to provide copies as requested, or failure to keep and make available adequate records which adequately document the services and payments shall constitute a violation of this section and shall be a reason for sanction. Failure to send records, which have been requested via mail, within the specified time frame shall constitute a violation of this section and shall be a reason for sanction;

5. Failing to provide and maintain quality, necessary and appropriate services, including adequate staffing for long-term care facility Medicaid recipients, within accepted medical community standards as adjudged by a body of peers, as set forth in both federal and state statutes or regulations. Failure shall be documented by repeat discrepancies. The discrepancies may be determined by a peer review committee, medical review teams, independent professional review

teams, utilization review committees or by Professional Standards Review Organizations (PSRO). The medical review may be conducted by qualified peers employed by the single state agency;

6. Engaging in conduct or performing an act deemed improper or abusive of the Medicaid program or continuing the conduct following notification that the conduct should cease. This will include inappropriate or improper actions relating to the management of recipients' personal funds or other funds;

7. Breaching of the terms of the Medicaid provider agreement of any current written and published policies and procedures of the Medicaid program (such as are contained in provider manuals or bulletins which are incorporated by reference and made a part of this rule as published by the Department of Social Services, Division of Medical Services, 615 Howerton Court, Jefferson City, MO 65102, at its website www.dss.mo.gov/dms, June 15, 2005. This rule does not incorporate any subsequent amendments or additions.) or failing to comply with the terms of the provider certification on the Medicaid claim form;

8. Utilizing or abusing the Medicaid program as evidenced by a documented pattern of inducing, furnishing or otherwise causing a recipient to receive services or merchandise not otherwise required or requested by the recipient, attending physician or appropriate utilization review team; a documented pattern of performing and billing tests, examinations, patient visits, surgeries, drugs or merchandise that exceed limits or frequencies determined by the department for like practitioners for which there is no demonstrable need, or for which the provider has created the need through ineffective services or merchandise previously rendered;

9. Rebating or accepting a fee or portion of a fee or charge for a Medicaid patient referral; or collecting a portion of the service fee from the recipient, except this shall not apply to Title XIX services for which recipients are responsible for payment of a copayment or coinsurance in accordance with 13 CSR 70-4.051 and 13 CSR 70-55.010;

10. Violating any provision of the State Medical Assistance Act or any corresponding rule;

11. Submitting a false or fraudulent application for provider status which misrepresents material facts. This shall include concealment or misrepresentation of material facts required on any provider agreements or questionnaires submitted by affiliates when the provider knew or should have known the contents of the submitted documents;

12. Violating any laws, regulations or code of ethics governing the conduct of occupations or professions or regulated industries. In addition to all other laws which would commonly be understood to govern or regulate the conduct of occupations, professions or regulated industries, this provision shall include any violations of the civil or criminal laws of the United States, of Missouri or any other state or territory, where the violation is reasonably related to the provider's qualifications, functions or duties in any licensed or regulated profession or where an element of the violation is fraud, dishonesty, moral turpitude or an act of violence;

13. Failing to meet standards required by state or federal law for participation (for example licensure);

14. Exclusion from the Medicare program or any other federal health care program;

15. Failing to accept Medicaid payment as payment in full for covered services or collecting additional payment from a recipient or responsible person, except this shall not apply to Title XIX services for which recipients are responsible for payment of a copayment or coinsurance in accordance with 13 CSR 70-4.051 and 13 CSR 70-55.010;

16. Refusing to execute a new provider agreement when requested to do so by the single state agency in order to preserve the single state agency's compliance with federal and state requirements; or failure to execute an agreement within twenty (20) days for compliance purposes;

17. Failing to correct deficiencies in provider operations within ten (10) days or date specified after receiving written notice of these deficiencies from the single state agency or within the time frame provided from any other agency having licensing or certification authority;

18. Being formally reprimanded or censured by a board of licensure or an association of the provider's peers for unethical, unlawful or unprofessional conduct; any termination, removal, suspension, revocation, denial, probation, consented surrender or other disqualification of all or part of any license, permit, certificate or registration related to the provider's business or profession in Missouri or any other state or territory of the United States;

19. Being suspended or terminated from participation in another governmental medical program such as Workers' Compensation, Crippled Children's Services, Rehabilitation Services, Title XX Social Service Block Grant or Medicare;

20. Using fraudulent billing practices arising from billings to third parties for costs of services or merchandise or for negligent practice resulting in death or injury or substandard care to persons including, but not limited to, the provider's patients;

21. Failing to repay or make arrangements for the repayment of identified overpayments or otherwise erroneous payments prior to the allowed forty-five (45) days which the provider has to refund the requested amount;

22. Billing the Medicaid program more than once for the same service when the billings were not caused by the single state agency or its agents;

23. Billing the state Medicaid program for services not provided prior to the date of billing (prebilling), except in the case of pre-paid health plans or pharmacy claims submitted by point-of-service technology; whether or not the prebilling causes loss or harm to the Medicaid program;

24. Failing to reverse or credit back to the medical assistance program (Medicaid) within thirty (30) days any pharmacy claims submitted to the agency that represent products or services not received by the recipient; for example, prescriptions that were returned to stock because they were not picked up;

25. Conducting any action resulting in a reduction or depletion of a long-term care facility Medicaid recipient's personal funds or reserve account, unless specifically authorized in writing by the recipient, relative or responsible person;

26. Submitting claims for services not personally rendered by the individually enrolled provider, except for the provisions specified in the Missouri Medicaid dental, physician, or nurse midwife programs where such claims may be submitted only if the individually enrolled provider directly supervised the person who actually performed the service and the person was employed by the enrolled provider at the time the service was rendered. All claims for psychiatric, psychological counseling, speech therapy, physical therapy, and occupational therapy services may only be billed by the individually enrolled provider who actually performs the service, as supervision is noncovered for these services. Services performed by a nonenrolled person due to Medicaid sanction, whether or not the person was under supervision of the enrolled provider, is a noncovered service;

27. Making any payment to any person in return for referring an individual to the provider for the delivery of any goods or services for which payment may be made in whole or in part under Medicaid. Soliciting or receiving any payment from any person in return for referring an individual to another supplier of goods or services regardless of whether the supplier is a Medicaid provider for the delivery of any goods or services for which payment may be made in whole or in part under Medicaid is also prohibited. Payment includes, without limitation, any kickback, bribe or rebate made, either directly or indirectly, in cash or in-kind;

28. Billing for services, through an agent, which were upgraded from those actually ordered, performed; or billing or coding services, either directly or through an agent, in a manner that services

are paid for as separate procedures when, in fact, the services were performed concurrently or sequentially and should have been billed or coded as integral components of a total service as prescribed in Medicaid policy for payment in a total payment less than the aggregate of the improperly separated services; or billing a higher level of service than is documented in the patient/client record; or unbundling procedure codes;

29. Conducting civil or criminal fraud against the Missouri Medicaid program or any other state Medicaid (medical assistance) program, or any criminal fraud related to the conduct of the provider's profession or business;

30. Having sanctions or any other adverse action invoked by another state Medicaid program;

31. Failing to take reasonable measures to review claims for payment for accuracy, duplication or other errors caused or committed by employees when the failure allows material errors in billing to occur. This includes failure to review remittance advice statements provided which results in payments which do not correspond with the actual services rendered;

32. Submitting improper or false claims to the state or its fiscal agent by an agent or employee of the provider;

33. For providers other than long-term care facilities, failing to retain in legible form for at least five (5) years from the date of service, worksheets, financial records, appointment books, appointment calendars (for those providers who schedule patient/client appointments), adequate documentation of the service, and other documents and records verifying data transmitted to a billing intermediary, whether the intermediary is owned by the provider or not. For long-term care providers, failing to retain in legible form, for at least seven (7) years from the date of service, worksheets, financial records, adequate documentation for the service(s), and other documents and records verifying data transmitted to a billing intermediary, whether the intermediary is owned by the provider or not. The documentation must be maintained so as to protect it from damage or loss by fire, water, computer failure, theft, or any other cause;

34. Removing or coercing from the possession or control of a recipient any item of durable medical equipment which has reached Medicaid-defined purchase price through Medicaid rental payments or otherwise become the property of the recipient without paying fair market value to the recipient;

35. Failing to timely submit civil rights compliance data or information or failure to timely take corrective action for civil rights compliance deficiencies within thirty (30) days after notification of these deficiencies or failure to cooperate or supply information required or requested by civil rights compliance officers of the single state agency;

36. Billing the Medicaid program for services rendered to a recipient in a long-term care facility when the resident resided in a portion of the facility which was not Medicaid-certified or properly licensed or was placed in a nonlicensed or Medicaid-noncertified bed;

37. Failure to comply with the provisions of the Missouri Department of Social Services, Division of Medical Services Title XIX Participation Agreement with the provider relating to health care services;

38. Failure to maintain documentation which is to be made contemporaneously to the date of service;

39. Failure to maintain records for services provided and all billing done under his/her provider number regardless to whom the reimbursement is paid and regardless of whom in his/her employ or service produced or submitted the Medicaid claim or both;

40. Failure to submit proper diagnosis codes, procedure codes, billing codes regardless to whom the reimbursement is paid and regardless of whom in his/her employ or service produced or submitted the Medicaid claim;

41. Failure to submit and document, as defined in subsection (2)(A) the length of time (begin and end clock time) actually spent providing a service, except for services as specified under 13 CSR

70-91.010(4)(A) Personal Care Program, regardless to whom the reimbursement is paid and regardless of whom in his/her employ or service produced or submitted the Medicaid claim or both; and

42. Billing for the same service as another provider when the service is performed or attended by more than one (1) enrolled provider. Missouri Medicaid will reimburse only one (1) provider for the exact same service.

(4) Any one (1) or more of the following sanctions may be invoked against providers for any one (1) or more of the program violations specified in section (3) of this rule:

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

ORDER OF RULEMAKING

By the authority vested in the director of the Division of Medical Services under sections 208.152, RSMo Supp 2004 and 208.152 as enacted by the 93rd General Assembly and 208.201, RSMo 2000, the director hereby amends a rule as follows:

13 CSR 70-4.050 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on June 15, 2005 (30 MoReg 1350-1353). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Division of Medical Services (DMS) received three (3) written comments regarding this proposed amendment.

COMMENT: The Missouri State Medical Association commented that they recognized that Senate Bill 539 granted Medicaid officials the statutory authority to implement changes to copayments due from Medicaid patients but that they continue to oppose the changes. It was the opinion of the Missouri State Medical Association that Medicaid copayments are nothing short of cost shifting, laying the state's burden on the backs of physicians and other Medicaid providers. According to the association, Missouri's Medicaid physician fees are among the lowest in the nation, often amounting to less than thirty-five (35) cents for every dollar it costs to provide the service. If the rule is changed to deduct patient copayment amounts from physician fees—whether or not the physician collects the copayment—there is a very good chance many physicians will choose to leave the Medicaid program, argues the Association. Physicians leaving the Medicaid program will create a terrible access problem for Medicaid patients, which will ultimately force many Medicaid recipients to visit expensive hospital emergency rooms for their basic health care needs, in the opinion of the Association. The Missouri State Medical Association respectfully urged the division to consider amending the rule to clarify that Medicaid will withhold copayment amounts only after the physician has collected them from the patient.

RESPONSE: Missouri will not receive federal financial participation for cost sharing amounts that "recipients should have paid" as copayments, in accordance with 42 *Code of Federal Regulations* 447.59. No changes have been made to the rule as a result of this comment.

COMMENT: One (1) comment from division staff noted that the list of services that required a copayment included optional Medicaid services that have been eliminated by the General Assembly.

RESPONSE AND EXPLANATION OF CHANGE: Section (1) will be amended to clarify which services will require a copayment from groups that are not exempted from the requirement in section (7).

COMMENT: One (1) comment from division staff noted that the list of exemptions to the copayment requirement was not complete.

RESPONSE AND EXPLANATION OF CHANGE: Section (7), renumbered from section (8), will be amended to correct the list of exemptions to the copayment requirement.

COMMENT: When reviewing the *Missouri Register* of June 15, 2005, page 1351, to formulate the order of rulemaking for 13 CSR 70-4.050 the division discovered an error in the authority section; section 208.152 had been transposed to 208.215.

RESPONSE AND EXPLANATION OF CHANGE: The authority section will be corrected.

13 CSR 70-4.050 Copayment and Coinsurance for Certain Medicaid-Covered Services

(1) Recipients eligible to receive Missouri Medicaid services under certain program areas shall be required to pay a small portion of the costs of the services. The services to be affected by the copayment or coinsurance requirements are—

- (A) Dental services related to trauma or the treatment of a disease/medical condition;
- (B) Optical services related to trauma or the treatment of a disease/medical condition, and one (1) eye exam every two (2) years;
- (C) Podiatry services provided through the podiatry program;
- (D) Inpatient hospital services;
- (E) Hospital outpatient clinic/emergency room services; and
- (F) All physician-related services.

(3) Copayment charged shall be in accordance with 42 CFR 447.54 and, applicable to the services described in subsections (1)(A) (excepting dentures), (B), (C), and (F), based on the following schedule:

Medicaid Payment for Each Item of Service	Recipient Copayment Amount
\$10 or less	\$0.50
\$10.01–\$25	\$1.00
\$25.01–\$50	\$2.00
\$50.01 or more	\$3.00

(7) The following is a list of exemptions to the Medicaid copayment requirement:

- (B) Services provided to recipients residing within a skilled nursing facility, an intermediate care facility, a residential care facility, an adult boarding home or a psychiatric hospital;
- (C) Services provided to recipients who have both Medicare and Medicaid entitlement if Medicare covers the service and provides payment for it;
- (J) Services identified as medically necessary through an Early Periodic Screening, Diagnosis and Treatment (EPSDT) screen;
- (K) Services provided through MC+ Managed Care Contracts;
- (L) Personal care services;
- (M) Mental health services;
- (N) Services provided to the blind;
- (O) Hospice services; and
- (P) Medicaid waiver services.

AUTHORITY: sections 208.152, RSMo Supp. 2004 and as enacted by the 93rd General Assembly and 208.201, RSMo 2000. This rule was previously filed as 13 CSR 40-81.054. Emergency rule filed Oct. 21, 1981, effective Nov. 1, 1981, expired Feb. 10, 1982. Original rule filed Oct. 21, 1981, effective Feb. 11, 1982. Emergency amendment

filed Jan. 21, 1983, effective Feb. 1, 1983, expired May 11, 1983. Amended: Filed Jan. 21, 1983, effective May 12, 1983. Amended: Filed Aug. 14, 1984, effective Nov. 11, 1984. Amended: Filed May 16, 2005.

**Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 40—Optical Program**

ORDER OF RULEMAKING

By the authority vested in the director of the Division of Medical Services under sections 208.152, RSMo Supp. 2004, 208.153 and 208.201, RSMo 2000 and Senate Substitute for Senate Bill 539 enacted by the 93rd General Assembly 2005, the director amends a rule as follows:

13 CSR 70-40.010 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on July 1, 2005 (30 MoReg 1448–1449). The section with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received. However, when reviewing the *Missouri Register* of July 1, 2005, page 1448, the division discovered an error in the authority section. Section 208.152 was listed as RSMo 2000; it should be 208.152, RSMo Supp. 2004.

RESPONSE AND EXPLANATION OF CHANGE: The authority section will be corrected.

13 CSR 70-40.010 Optical Care Benefits and Limitations—Medicaid Program

AUTHORITY: sections 208.152, RSMo Supp. 2004 and 208.153 and 208.201, RSMo 2000, and Senate Substitute for Senate Bill 539 enacted by the 93rd General Assembly, 2005. This rule was previously filed as 13 CSR 40-81.170. Emergency rule filed April 10, 1981, effective April 20, 1981, expired July 10, 1981. Original rule filed April 10, 1981, effective July 11, 1981. Emergency amendment filed June 27, 2002, effective July 7, 2002, terminated Feb. 23, 2003. Amended: Filed July 15, 2002, effective Feb. 28, 2003. Amended: Filed March 3, 2003, effective Oct. 30, 2003. Amended: Filed June 1, 2005.

**Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 97—Health Insurance Premium Payment (HIPP)
Program**

ORDER OF RULEMAKING

By the authority vested in the director of the Division of Medical Services under sections 208.153 and 208.201, RSMo 2000, the director hereby amends a rule as follows:

13 CSR 70-97.010 Health Insurance Premium Payment (HIPP) Program is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on July 1, 2005 (30 MoReg 1450–1451). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed

amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 99—Comprehensive Day Rehabilitation**

ORDER OF RULEMAKING

By the authority vested in the director of the Division of Medical Services under sections 208.152, 208.471 and 208.631, RSMo Supp. 2004 and 208.153, 208.164, 208.201 and 208.633, RSMo 2000 and Senate Substitute for Senate Bill 539 enacted by the 93rd General Assembly 2005, the director adopts a rule as follows:

13 CSR 70-99.010 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on July 1, 2005 (30 MoReg 1451-1454). The section with changes is reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received. However, when reviewing the *Missouri Register* of July 1, 2005, page 1452, the division discovered an error in the authority section. Sections 208.152, 208.471 and 208.631 were listed as RSMo 2000; they should be 208.152, 208.471 and 208.631, RSMo Supp. 2004.

RESPONSE AND EXPLANATION OF CHANGE: The authority section will be corrected.

13 CSR 70-99.010 Comprehensive Day Rehabilitation Program

AUTHORITY: sections 208.152, 208.471 and 208.631, RSMo Supp. 2004 and 208.153, 208.164, 208.201 and 208.633, RSMo 2000, and Senate Substitute for Senate Bill 539 enacted by the 93rd General Assembly, 2005. Original rule filed June 1, 2005.

This section may contain notice of hearings, correction notices, public information notices, rule action notices, statements of actual costs and other items required to be published in the *Missouri Register* by law.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT Division 100—Division of Credit Unions

ACTIONS TAKEN ON APPLICATIONS FOR NEW GROUPS OR GEOGRAPHIC AREAS

Pursuant to section 370.081(4), RSMo 2000, the director of the Missouri Division of Credit Unions is required to cause notice to be published that the director has either granted or rejected applications from the following credit unions to add new groups or geographic areas to their membership and state the reasons for taking these actions.

The following applications have been granted. These credit unions have met the criteria applied to determine if additional groups may be included in the membership of an existing credit union and have the immediate ability to serve the proposed new groups or geographic areas. The proposed new groups or geographic areas meet the requirements established pursuant to 370.080(2), RSMo 2000.

Credit Union	Proposed New Group or Geographic Area
Edison Credit Union 4200 E. Front Street Kansas City, MO 64120	Active or retired employees of Waller Logistics, Inc. and Waller Truck Company, Inc.

MISSOURI DIVISION OF CREDIT UNIONS

APPLICATION TO EXPAND THE FIELD OF MEMBERSHIP OF EDISON CREDIT UNION

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The application to expand the field of membership was received by the director, Division of Credit Unions on June 24, 2005.
2. The application was submitted in the required format and on July 5, 2005 was deemed to be complete.
3. Credit Union by resolution of their Board of Directors dated June 21, 2005 with said resolution submitted with the field of membership application, will expand their field of membership only by employee groups (RSMo 370.081.4; 370.080.2).
4. The application to expand the Edison Credit Union's field of membership is for active or retired employees of Waller Logistics, Inc. and Waller Truck Company, Inc. According to the application, there are approximately 212 employees within the applicant group; therefore provisions of RSMo 370.081.2 and 4 CSR 105-3.040 Exemptions from Limitations on Groups are not applicable.
5. After review of Edison Credit Union's most recent Supervisory Examination Report and the June 30, 2005 call report, the director is satisfied that the credit union is operating in a safe and sound man-

ner and there are no adverse conditions or regulatory concerns. (4 CSR 105-3.020 Criteria for Additional Membership Groups (1)(A)).

6. Edison Credit Union's net worth as reported on the December 31, 2004 call report is 13.01%. The director finds Edison Credit Union is adequately capitalized. (4 CSR 105-3.020 Criteria for Additional Membership Groups (1)(B)).

7. After review of Edison Credit Union's business plan submitted as part of the field of membership application, June 30, 2005 call report, and the most recent Supervisory Examination Report, the director finds this credit union has the administrative capability and the financial resources to serve the proposed groups. (4 CSR 105-3.020 Criteria for Additional Membership Groups (1)(C)).

8. That the formation of a separate credit union by these small groups is not practical and consistent with reasonable standards for the safe and sound operation of a credit union. (4 CSR 105-3.020 Criteria for Additional Membership Groups (1)(D)).


Sandra K. Branson, Director
Division of Credit Unions

Date: September 6, 2005

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES Division 60—Missouri Health Facilities Review Committee Chapter 50—Certificate of Need Program

APPLICATION REVIEW SCHEDULE

The Missouri Health Facilities Review Committee has initiated review of the applications listed below. A decision is tentatively scheduled for November 21, 2005. These applications are available for public inspection at the address shown below:

Date Filed

Project Number: Project Name
City (County)
Cost, Description

09/09/05

#3800 HS: North Kansas City Hospital
North Kansas City (Clay County)
\$1,640,765, Replace computerized tomography scanner

#3826 HS: Select Specialty Hosp.—Springfield, Inc.
Springfield (Greene County)
\$15,743,740, Establish 44-bed long-term care hospital

#3803 HS: Select Specialty Hosp.—St. Louis, Inc.
St. Louis (St. Louis City)
\$3,918,000, Establish 36-bed long-term care hospital

Any person wishing to request a public hearing for the purpose of commenting on these applications must submit a written request to

this effect, which must be received by October 12, 2005. All written requests and comments should be sent to:

Chairman
Missouri Health Facilities Review Committee
c/o Certificate of Need Program
915 G Leslie Boulevard
Jefferson City, MO 65101

For additional information contact
Donna Schuessler, (573) 751-6403.

The Secretary of State is required by sections 347.141 and 359.481, RSMo 2000 to publish dissolutions of limited liability companies and limited partnerships. The content requirements for the one-time publishing of these notices are prescribed by statute. This listing is published pursuant to these statutes. We request that documents submitted for publication in this section be submitted in camera ready 8 1/2" x 11" manuscript.

NOTICE OF WINDING UP TO ALL CREDITORS OF AND CLAIMANTS AGAINST GROUP HEALTH PROPERTY COMPANY OF KANSAS CITY, L.L.C.

The Notice of Winding Up for Group Health Property Company of Kansas City, L.L.C. (the "Company") was filed with the Missouri Secretary of State on August 29, 2005.

You are hereby notified that if you believe you have a claim against the Company, you must submit your claim in writing to C. Brent Bertram, Associate General Counsel, Blue Cross and Blue Shield of Kansas City, 2301 Main Street, Kansas City, Missouri 64108. Your claim must include the following information:

1. The name, address and telephone number of the claimant.
2. The amount of the claim.
3. The date the claim accrued or will accrue.
4. A brief description of the nature of the debt or the basis of the claim and documentation.

All claims against the Company will be barred unless a proceeding to enforce the claim is commenced within 3 years after the publication of this notice.

NOTICE OF DISSOLUTION OF LIMITED LIABILITY COMPANY TO ALL CREDITORS OF AND CLAIMANTS AGAINST Tech Framing, LLC

On September 07, 2005, Tech Framing LLC, a Missouri LLC ("Company") filed its Notice of Winding Up with the Missouri Secretary of State, effective on the filing date.

Claims against Company should be presented immediately to Company c/o Law Office of Mark A Reiter, LLC, 7422 N Manchester Avenue, Kansas City, MO 64158. Claims must include claimant's name, address and telephone; amount of claim; basis for the claim; and documentation of the claim. A claim against Company will be barred unless a proceeding to enforce the claim is commenced within three years after the publication of this notice.

Re: Dissolution of Insurance Compliance Consulting Services, Inc. ("ICCS")

To whom it may concern:

You are hereby notified that ICCS, a Missouri corporation, was voluntarily dissolved effective March 31, 2005. In the event ICCS owes any amount to you, please submit a written claim to ICCS with the following information: (1) the amount of your claim; (2) a brief description of the basis for your claim, including specific reference to any written contract upon which your claim is based; (3) your mailing address to which ICCS should forward payment or correspondence relating to your claim; and (4) the phone number and e-mail address for a contact person who is responsible for your claim. You should send your claim to the following mailing address:

Insurance Compliance Consulting Services, Inc.
9400 Fourth Street North
Suite 200
St. Petersburg, Florida 33702

A claim against ICCS will be barred unless a proceeding to enforce the claim is commenced within two years after publication of this notice.

**NOTICE TO CREDITORS OF AND CLAIMANTS
AGAINST RAINBOW PRODUCTIONS, LLC:**

NOTICE OF TERMINATION AND WINDING UP

On SEPTEMBER 6, 2005, RAINBOW PRODUCTIONS, LLC, a Missouri Limited Liability Company ("Company") filed its **Articles of Termination** with the office of the Missouri Secretary of State. Any claims against the Company may be sent to J. Richard Owensby, Registered Agent, 1949 E. Sunshine, Suite 1-130, Springfield, MO 65804. Each claim must include the following information:

1. The name, address and phone number of claimant;
2. The amount of the claim;
3. The date on which claim arose;
4. The basis for the claim; and
5. All documentation in support of the claim.

All claims against the Company will be barred unless the proceedings to enforce the claim are commenced within three (3) years after publication of this notice.