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SALUS POPULI SUPREMA LEX ESTO

*"The welfare of the people shall be the supreme law."*



ROBIN CARNAHAN  
SECRETARY OF STATE

MISSOURI  
REGISTER

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November 3, 2008 November 17, 2008	<b>December 1, 2008</b> <b>December 15, 2008</b>	December 31, 2008 December 31, 2008	January 30, 2009 January 30, 2009
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Documents will be accepted for filing on all regular workdays from 8:00 a.m. until 5:00 p.m. We encourage early filings to facilitate the timely publication of the *Missouri Register*. Orders of Rulemaking appearing in the *Missouri Register* will be published in the *Code of State Regulations* and become effective as listed in the chart above. Advance notice of large volume filings will facilitate their timely publication. We reserve the right to change the schedule due to special circumstances. Please check the latest publication to verify that no changes have been made in this schedule. To review the entire year's schedule, please check out the website at <http://www.sos.mo.gov/adrules/pubsched.asp>

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## HOW TO CITE RULES AND RSMo

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

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

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

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

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

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

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

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

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

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

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

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

Proposed Amendment Text Reminder:

**Boldface text indicates new matter.**

*[Bracketed text indicates matter being deleted.]*

**Title 5—DEPARTMENT OF ELEMENTARY AND  
SECONDARY EDUCATION  
Division 30—Division of Administrative and Financial  
Services  
Chapter 640—School Buildings**

**PROPOSED RULE**

**5 CSR 30-640.100 Rebuild Missouri Schools Program**

*PURPOSE: This rule establishes filing requirements for eligible school districts for funding under the Rebuild Missouri Schools Program.*

(1) Pursuant to section 160.459, RSMo, the Department of Elementary and Secondary Education (DESE) shall receive applications from eligible school districts for funding under the Rebuild Missouri Schools Program.

(2) Applications for funding under this section shall be in the form of a letter of application containing the following:

(A) A description of the damage to the school district facility sufficient to document the extent to which all or a substantial portion of the facility is unusable. Documentation shall include the following:

1. Photographs of the area of damage and documentation of the source of the damage; and

2. Insurance adjuster's report, report by emergency personnel, or an affidavit by the president of the local board of education;

(B) Documentation that the facility is located in an area that has been declared a disaster area by the president of the United States or the governor of the state of Missouri;

(C) A description of the emergency project, including a statement of the cost of the project, the estimated timeline for construction and re-occupancy of the facility, the extent of insurance coverage maintained on the facility at the time of the damage, the amount of insurance proceeds to be realized, and a listing of any other money received as a result of the damage; and

(D) A statement of proposed repayment, including a statement of the sources of funds to be used for repayment.

(3) Upon receipt of a letter of application, DESE shall determine whether the application and the accompanying documentation meet the requirements of section 160.459, RSMo, and of this rule.

(A) Non-conforming letters of application may be returned to the applicant school district with a statement of the basis for rejection and, where appropriate, a statement of the areas in which the application may be corrected.

(B) Conforming letter of application shall be accepted. Notice of acceptance shall be given to the school district, along with a proposed repayment agreement.

(4) Conforming letters of application and the proposed repayment agreement shall be submitted with a recommendation of the commissioner of education to the state board of education.

(5) Funding of the application is subject to appropriation by the general assembly.

(6) Repayment of the amounts distributed pursuant to this rule shall be received by DESE pursuant to section 160.459, RSMo, and the repayment agreement submitted by the school district.

*AUTHORITY: section 160.459, SB 1170, Second Regular Session, Ninety-fourth General Assembly, 2008 and section 161.092, RSMo Supp. 2007.*

*PUBLIC COST: The cost of this proposed rule cannot be estimated. Any impact would depend upon the extent to which school facilities sustain uninsured damage or destruction due to an act of God or extreme weather events. The funds available will be subject to appropriations.*

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Department of Elementary and Secondary Education, ATTN: Roger Dorson, Coordinator of School Administrative Services, Division of Administrative and Financial Services, PO Box 480, Jefferson City, MO 65102-0480. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.*

**FISCAL NOTE  
PUBLIC COST****I. RULE NUMBER****Department Title:** Title 5 Department of Elementary and Secondary Education**Division Title:** Division 30 Division of Administrative and Financial Services**Chapter Title:** Chapter 640 School Buildings

<b>Rule Number and Name:</b>	5 CSR 30-640.100 Rebuild Missouri Schools Program
<b>Type of Rulemaking:</b>	Proposed Rule

**II. SUMMARY OF FISCAL IMPACT**

<b>Affected Agency or Political Subdivision</b>	<b>Estimated Annual Cost of Compliance in the Aggregate</b>
School Districts	The cost of this proposed rule cannot be estimated.

**III. WORKSHEET****IV. ASSUMPTIONS**

Any impact would depend upon the extent to which school facilities sustain uninsured damage or destruction due to an act of God or extreme weather events. The funds available will be subject to appropriations.

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

**PROPOSED RESCISSION**

**6 CSR 10-2.010 Institutional Eligibility for Student Participation.** This rule provided for the institutional eligibility requirements and responsibilities for participation in the Charles Gallagher Student Financial Assistance Program, formerly known as the Missouri Grant Program.

*PURPOSE:* This rule is being rescinded as the statute creating the Charles Gallagher Student Financial Assistance Program was repealed by the General Assembly effective in August 2007.

*AUTHORITY:* section 173.210, RSMo 1994. Original rule filed June 9, 1978, effective Dec. 16, 1978. Amended: Filed Dec. 15, 1988, effective April 1, 1989. Rescinded: Filed Dec. 15, 2008.

*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 Higher Education, Financial Assistance, Outreach, and Proprietary School Certification, Kelli Reed, Student Assistance Associate, 3515 Amazonas Drive, 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 6—DEPARTMENT OF HIGHER EDUCATION  
Division 10—Commissioner of Higher Education  
Chapter 2—Student Financial Assistance Program**

**PROPOSED RESCISSION**

**6 CSR 10-2.020 Student Eligibility and Application Procedures.** This rule provided for student eligibility requirements and application procedures for the Charles Gallagher Student Financial Assistance Program, formerly known as the Missouri Grant Program.

*PURPOSE:* This rule is being rescinded as the statute creating the Charles Gallagher Student Financial Assistance Program was repealed by the General Assembly effective in August 2007.

*AUTHORITY:* section 173.210, RSMo 2000. Original rule filed Aug. 7, 1978, effective March 17, 1979. For intervening history, please consult the *Code of State Regulations*. Rescinded: Filed Dec. 15, 2008.

*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 Higher Education, Financial Assistance,

*Outreach, and Proprietary School Certification, Kelli Reed, Student Assistance Associate, 3515 Amazonas Drive, 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 6—DEPARTMENT OF HIGHER EDUCATION  
Division 10—Commissioner of Higher Education  
Chapter 2—Student Financial Assistance Program**

**PROPOSED AMENDMENT**

**6 CSR 10-2.080 Higher Education Academic Scholarship Program.** The commissioner of higher education is amending sections (1) through (5) and adding section (6).

*PURPOSE:* This amendment updates statutory references, student eligibility criteria, and institutional responsibility requirements.

(1) Definitions.

**(B) ACT means the American College Testing Program.**

*[(B)](C)* Applicant is anyone who applies to the *[coordinating board]* MDHE for a scholarship under the academic scholarship program and who qualifies under section 173.1104, RSMo, excluding undergraduate status.

*[(C)](D)* Approved institution *[shall be]* means any *[private or public]* institution located in the state of Missouri that meets the requirements set forth in section 173.205/1102(2) or *[173.205](3)*, RSMo, and that has been approved under 6 CSR 10-2.140.

**(E) Approved student deferment period or deferment is a period of time up to the maximum time allowed in section 173.250, RSMo, during which an eligible initial or renewal recipient may cease enrollment without losing scholarship eligibility. The deferment shall begin on July 1 of the academic year for which the student's deferment was approved or July 1 following the most recent academic year that the student received scholarship assistance.**

*[(D)](F)* Certificate of high school equivalence shall be a certificate that is awarded to an applicant who has successfully completed and passed the General Educational Development (GED) examination as established by the Commission on Educational Credit and Credentials of the American Council on Education (ACE).

**(G) Completed secondary coursework or completion of secondary coursework shall be graduation from high school, completion of a formal home school program consistent with Missouri statutory requirements, or receipt of a certificate of high school equivalence.**

**(H) Consortium agreement means a written agreement between two (2) or more approved institutions that allows students to take courses at a school other than the home school and have those courses count toward the degree or certificate at the home school that complies with the United States Department of Education requirements for federal student financial assistance.**

*[(E)](I)* Continually enrolled shall be enrollment as a full-time student who receives scholarship assistance at an approved institution for at least one (1) semester, trimester, or quarter, not including summer terms, in the academic year for which the scholarship award was *[originally]* offered.

*[(F)](J)* *[Coordinating board or board is]* CBHE means the Coordinating Board for Higher Education *[(CBHE)]* created by section 173.005, RSMo.

*[(G)](K)* Expenses shall be any *[allowable expenses related to room, board, travel and personal costs of the applicant necessary to satisfactorily provide and complete a service to a nonprofit organization, a state or federal government agency]* education-related expenses including, but not limited to, tuition, fees, and room and board.

**[(H)](L)** Full-time student shall be defined by the approved institution as a postsecondary student who is enrolled in and is carrying a sufficient number of credit hours or its equivalent (minimum twelve (12) credit hours), *excluding correspondence-type courses,* at the approved private or public Missouri institution to secure the degree or certificate toward which the student is working in accordance with paragraph (2)(A)9.75. of this rule. **Provided, however, that an otherwise eligible student having a disability as defined by Title II of the Americans with Disabilities Act (42 U.S.C. 12101-12213) who, because of his disability, is unable to satisfy the statutory minimum requirements for full-time status under Title IV student aid programs shall be considered by the approved institution to be a full-time student and shall be considered to be making satisfactory academic progress, as defined in paragraph (1)(X) of this rule, while carrying a minimum of six (6) credit hours or their equivalent at the approved institution.**

**[(I)](M)** Higher Education Academic Scholarship Program or academic scholarship program shall mean the academic scholarship program provisions *[included in]* created by section 173.250, RSMo.

**(N)** His or he shall apply equally to the female as well as the male sex where applicable in this rule.

**[(J)](O)** Initial recipient shall be any applicant who meets the eligibility requirements and is awarded an academic scholarship under the academic scholarship program *[as a graduating high school senior, a homeschooled student, or a student who has obtained a certificate of high school equivalence by passing the GED examination]* in the academic year immediately following completion of secondary coursework.

**[(K)](P)** Medical need shall be *[an]* a verified illness, disability, pregnancy, or other medical *[need]* condition that prevents an eligible applicant from enrolling as a renewal recipient or which requires a recipient to cease all attendance at an approved institution in the academic year for which the scholarship award was originally offered.

**(Q)** MDHE shall be the Missouri Department of Higher Education created by section 173.005, RSMo.

**(R)** Missouri test takers shall be all Missouri high school students taking the ACT examination or the SAT during the student's senior year in high school.

**[(L)](S)** Nonprofit organization shall be any organization which is organized under the laws of its home state as a not-for-profit corporation or organization, such as a charitable, scientific, or literary organization.

**(T)** Qualifying score shall be a composite score on the ACT examination or the SAT achieved in an eligible student's high school sophomore, junior, or senior year that is in the top three percent (3%) of all Missouri test takers for fiscal years prior to 2011, and five percent (5%) of Missouri test takers for fiscal year 2011 and each fiscal year thereafter.

**[(M)](U)** Renewal recipient shall be any applicant who received an academic scholarship as an initial recipient under the academic scholarship program and meets the eligibility requirements under the provisions of this rule and requirements as defined by the approved institution and is awarded a renewable academic scholarship under the academic scholarship program.

**[(N)](V)** Resident of Missouri is any person who meets the requirements for resident status for Missouri set forth by the *[coordinating board,]* CBHE in 6 CSR 10-3.010.

**(W)** SAT means the Scholastic Aptitude Test of the College Board.

**[(O)](X)** Satisfactory *[academic degree progress or satisfactory]* academic progress shall be a cumulative grade point average (CGPA) of at least two and one-half (2.5) on a four-point (4.0) scale, or the equivalent on another scale, and, with the exception of grade point average, as otherwise determined by the approved institution's policies as applied to other students at the approved institution receiving assistance under Title IV financial aid programs included in the Higher Education Act of 1965. The calculation of CGPA shall

be based on the approved institution's policies as applied to other students in similar circumstances.

**[(P)](Y)** Scholarship assistance or award shall be an amount of money paid by Missouri to a qualified applicant pursuant to the provisions of this rule.

**[(Q)]** *Standard admissions policies shall be policies approved and published by the approved institution to admit special students and students having a certificate of graduation.*

**(R)** *Student deferment or deferment of eligibility shall be a period of time up to twenty-seven (27) continuous months during which an eligible applicant or recipient may defer scholarship eligibility to participate in an international student exchange program, provide a service to a nonprofit organization, a state or federal government agency, serve on active duty in any branch of the armed forces of the United States or because of medical needs. The deferment shall begin on July 1 of the academic year that the student was approved for or July 1 following the most recent academic year that the student received scholarship assistance.]*

**(Z)** Service-related expenses shall be any allowable expenses related to room, board, travel, and personal costs of the applicant necessary to satisfactorily provide and complete a service to a nonprofit organization, or a state or federal government agency.

**[(S)](AA)** Student exchange program shall be any recognized international or national secondary-level exchange program recognized by the student's high school that is available to qualified students *[for the applicant]* to continue *[his/her]* their educational studies.

**[(T)](BB)** Sufficient documentation *[or verification]* shall be *[required]* documents including, but not limited to, letters of participation, application materials, copies of orders or release papers, or a statement of medical need provided by the student exchange program, the nonprofit organization, a state or federal government agency, any branch of the armed forces, or a practicing medical physician *[and must be in the form of letters of participation, application materials, copies of orders or release papers, or a statement of medical need]* that verifies a student's status to the satisfaction of the MDHE.

**(2) [Student Applicant and Recipient Qualifications and Responsibilities] Basic Eligibility Policy.**

**(A)** To be eligible for initial or renewed scholarship assistance under the academic scholarship program, an applicant must meet the following conditions:

1. Be a citizen or permanent resident of the United States;
2. Be a resident of Missouri;
3. Be enrolled or accepted for enrollment as a full-time postsecondary student at an approved institution for the period of the scholarship and *[is]* be in compliance with section 173.215/1104, RSMo, excluding the requirement[s] of *[financial need and]* undergraduate status;
  4. *Be a high school senior and have a composite score on either the American College Testing Program (ACT) or the Scholastic Aptitude Test (SAT) of the college board in the top three percent (3%) of all Missouri students taking those tests during the student's senior year in high school and be offered and receive a scholarship award as a first-time full-time first-year postsecondary student the academic year immediately following their senior year in high school to be eligible for scholarship assistance as an initial recipient;*
  5. *Be enrolled full-time continually (not including periods of enrollment during the summer terms) as second-, third-, fourth- and fifth-year students or other students meeting the eligibility requirements of this rule in an approved institution and have continually received an academic scholarship subject to the availability of state-appropriated funds to be eligible for scholarship assistance as a renewal recipient;*



6. *Maintain satisfactory academic progress in his/her course of study, according to standards determined by the approved institution;*

7. *Has never been convicted in any court of an offense which involved the use of force, disruption or seizure of property under the control of any institution of higher education to prevent officials or students in these institutions from engaging in their duties or pursuing their studies.;*

[8.]4. *Not be enrolled or intend to use the award to enroll in a course of study leading to a degree in theology or divinity; and*

[9.]5. *Be allotted scholarship assistance for one (1) academic year, but an applicant shall be eligible for renewed assistance until [s/he] he has obtained a baccalaureate degree; provided, the scholarship assistance shall not exceed a total of ten (10) semesters or fifteen (15) quarters or their equivalents.;* and

10. *An initial recipient must complete an application for scholarship assistance and must submit all of the required application materials to the coordinating board according to the provisions of this rule.]*

**(B) To be eligible for initial scholarship assistance, an applicant must also:**

1. **Have completed secondary coursework and have achieved a qualifying score;**

2. **Be offered and receive a scholarship award as a first-time, full-time, first-year postsecondary student the academic year immediately following completion of secondary coursework; and**

3. **Complete and submit all requested eligibility information to the MDHE according to the provisions of this rule.**

**(C) To be eligible for renewed scholarship assistance, an applicant must also:**

1. **Be continually enrolled in an approved institution full-time, excluding periods of enrollment during summer terms, as a second-, third-, fourth- or fifth-year student, or other student meeting the eligibility requirements of this rule;**

2. **Have continually received an academic scholarship subject to the availability of state-appropriated funds; and**

3. **Maintain satisfactory academic progress in his course of study.**

[(B)](D) *To be approved for [student] a deferment [status], [applicants and] initial and renewal recipients who cease all enrollment due to participation in a student exchange program, provision of a service to a nonprofit organization, a state or federal government agency, or service on active duty in any branch of the armed forces of the United States or because of medical need must meet the [following requirements] eligibility requirements for scholarship assistance in accordance with the provisions of this rule, with the exception of continuous enrollment. Prior to the student's change in status, the student must[:]-*

[1. *Meet the eligibility requirements for scholarship assistance in accordance with the provisions of this rule.;*

[2.]1. *Contact the [coordinating board] CBHE in writing to request a student deferment of eligibility; and*

[3.]2. *Complete and submit the deferment of eligibility form that is provided by the [coordinating board] MDHE, along with sufficient documentation indicating the renewal recipient ceased all attendance or the initial recipient was unable to enroll and receive scholarship assistance at an approved institution in the academic year for which the scholarship was originally offered.;* and

4. *Submit to the coordinating board, along with the completed deferment form, sufficient documentation that verifies to the satisfaction of the coordinating board the student ceased all attendance or the student was unable to enroll and receive scholarship assistance at an approved institution in the academic year for which the scholarship award was originally offered.]*

[(C)](E) *To satisfactorily complete the approved student deferment period, applicants and recipients must meet the following requirements in the academic year immediately following the student deferment period:*

1. *Notify the [coordinating board] MDHE by submitting [verification documenting that] sufficient documentation verifying the approved student deferment period was satisfactorily completed within the original dates, not to exceed [twenty-seven (27) continuous months, as approved by the coordinating board] the maximum time frame allowed in section 173.250, RSMo;*

2. *[Have a completed scholarship application or a renewal student record submitted with the coordinating board in accordance with] Complete and submit all requested eligibility information to the MDHE according to the provisions of this rule;*

3. **Have met all other requirements established for eligibility to receive an initial or renewal scholarship;**

[3.]4. *Enroll as a full-time student at an approved institution [in the academic year immediately following the student deferment period]; and*

[4.]5. *Submit sufficient documentation [as verification] verifying to the [coordinating board] MDHE that the student was not compensated for other than service-related expenses for a service that was provided to a nonprofit organization[, a state or federal government agency].*

(3) **Responsibilities of Approved Institutions. Institutions participating in the Higher Education Academic Scholarship Program must meet the requirements set forth in 6 CSR 10-2.140, Institutional Eligibility for Student Participation.**

[(A) *Approved institutions shall meet the following requirements:*

1. *Follow the provisions included in section 173.205(2) or (3), RSMo;*

2. *Admit students based on the approved institution's standard admissions policies;*

3. *Submit a copy of the institution's policy on satisfactory academic degree progress for the coordinating board's records;*

4. *Establish fair and equitable refund policies covering tuition, fees and, where paid to the school, room and board charges. That refund policy shall be the same policy which is utilized by the approved institution for refunding all federal Title IV financial aid programs included in the Higher Education Act of 1965;*

5. *Sign the Agreement for Educational Institution Participation in the Higher Education Academic Scholarship Program as provided by the coordinating board;*

6. *Systematically organize all student records (student financial aid, registrar, business office) pertaining to student recipients under the scholarship program to be made readily available for review upon request by the coordinating board; and*

7. *Verify the student's renewal eligibility for the academic scholarship program by transmitting the renewal student's record to the coordinating board by the annual deadline published by the coordinating board for the current academic year.*

**(B) When the approved institution receives the academic scholarship program funds for the awards made by the coordinating board, the approved institution must comply with the following:**

1. **Determine if the applicant is enrolled full-time and is making satisfactory academic progress in his/her course of study according to standards determined by the approved institution;**

2. Deliver the scholarship program funds to the applicant in the amount awarded to that applicant by the coordinating board and obtain the applicant's endorsement, retaining the portion of the award which the applicant owes for educational-related expenses (tuition, fees, room and board or other educational-related expenses) to that particular approved institution and promptly give the applicant any remaining funds;

3. Must notify the coordinating board if, prior to disbursement, the applicant to whom an award has been made has not enrolled full-time, or has indicated that s/he does not plan to enroll full-time, and return the applicant's check within thirty (30) days of learning these facts;

4. Shall be responsible for the repayment of any scholarship funds sent to it by the coordinating board in the following instances:

A. The approved institution delivers funds to an applicant not eligible under the academic scholarship program if the award was based on erroneous, improper or misleading information provided by the approved institution to the coordinating board; or

B. The approved institution delivers the academic scholarship funds to a person other than the one to whom the coordinating board has directed the funds be delivered; and

5. Determine and calculate the amount of refunds to the coordinating board based on the refund formula of the approved institution for applicants who withdraw. The coordinating board may refuse to award scholarships to applicants who attend approved institutions which fail to make timely refunds to the coordinating board.]

#### (4) Application and Evaluation Policy.

(A) The [coordinating board] CBHE shall [annually] prescribe the form of and the time and method of filing applications under the academic scholarship program.

(B) An application for scholarship assistance under the academic scholarship program shall be made [annually by the applicant upon] in the form and method prescribed by the [coordinating board] CBHE.

(C) [High school seniors' ACT or SAT official test scores from national test dates will be evaluated using the Missouri high school profile chart provided by the ACT or the SAT of the college board to determine if the applicants' test scores are in the top three percent (3%) of all Missouri students taking the ACT or SAT test during their senior year in high school for the coordinating board to make a determination of the applicants' eligibility for awards as initial recipients] The CBHE will determine if an applicant has achieved a qualifying score and is eligible for an award as an initial recipient by evaluating the official ACT or SAT test scores from national test dates in comparison to the Missouri high school senior score report provided by ACT or the College Board. Verification of the initial recipient's test scores from national test dates must be provided by [the] ACT [Program,] or [by] the [c]College [b]Board, or by an official at the high school [official with the student's scholarship application.] from which the initial recipient graduated or a financial aid officer at the approved institution in which the initial recipient is enrolled or plans to enroll based on documentation from ACT or the College Board. Failure to provide official test score verification will result in the application being incomplete.

[(D) Test scores from the applicant's sophomore, junior or senior year in high school shall be acceptable in determining eligibility for the academic scholarship program as long as the test scores are in the top three percent (3%) during their senior year in high school.]

[(E)](D) If an eligible applicant has been offered or has received a scholarship award under the provisions of this rule and if the applicant's qualifying composite test score has officially been cancelled and is determined to be invalid by [the] ACT or the [SAT of the] [c]College [b]Board then the applicant will be declared ineligible for further award by the [coordinating board] MDHE for the scholarship program [and the applicant or the recipient shall be responsible for the repayment of all scholarship awards to the coordinating board].

[(F)](E) [Second-, third-, fourth- and fifth-year students or other students meeting the eligibility requirements of this rule enrolled in approved institutions] All applicants and renewal students will be evaluated by the [coordinating board] MDHE according to the eligibility criteria under the provisions of this rule, [and] the information submitted by the approved institution, and on any other information received by and deemed reliable by the [coordinating board for renewal recipients] MDHE.

[(G)](F) The deadline for [receiving] having completed [academic scholarship applications] eligibility information on file will be published annually by the [coordinating board] MDHE for each academic year. Completed [applications and renewal records] eligibility information must be [received by] on file with the [coordinating board] MDHE on or before the published deadline to be considered on time and for the applicant to have priority consideration. Incomplete [applications or incomplete renewal] records received by the [coordinating board] MDHE will not be processed.

[(H)](G) [Completed academic scholarship applications and renewal records received] Eligibility information completed after the annual deadline published by the [coordinating board] MDHE will be awarded provided program funds are available, based on a review by the [coordinating board] MDHE.

#### (5) [Academic Scholarship Program Award Limits and Criteria] Award Policy.

(A) The maximum academic scholarship program award amount for each applicant per academic year shall be [two thousand dollars (\$2000), not to exceed one thousand dollars (\$1000) per school term] the amount(s) referenced in section 173.250, RSMo. [Awards at approved institutions utilizing trimester academic programs shall be evenly distributed over the three (3) terms.]

(B) Awards at approved institutions utilizing trimester academic programs shall be evenly distributed over the three (3) terms.

[(B)](C) Financial need shall not be used by the [coordinating board] MDHE in determining eligibility for awards under the academic scholarship program for an applicant.

[(C) Applicants who qualify as renewal recipients under the provisions of this rule shall have priority in the awarding of program funds. If sufficient program funds are unavailable to award all eligible renewal recipients, program funds shall be awarded in the following order: fifth-, fourth-, third- and second-year students as defined by the approved institution.]

(D) Applicants who qualify as initial recipients under the provisions of this rule, will be awarded each year of the program, based on the availability of program funds.]

[(E)](D) If sufficient program funds are unavailable to award to [initial] all recipients, the award[s] amounts will be [made based on the earliest date the completed applications are received by the coordinating board] reduced equally for all recipients until all funds have been expended.

[(F) An applicant receiving an award under the academic scholarship program shall have made satisfactory academic progress as defined by the approved institution in order to be eligible for a subsequent award under the academic scholarship program.]

*[(G)](E)* The award amount for any given academic year will be disbursed to the approved institution equally according to the number of semesters at the approved institution and awarded for each semester of enrollment.

*[(H)](F)* Awards will not be made for periods of enrollment during *[the]* summer *[term(s)]* terms.

**(G) Awards will be issued only after certification of full-time attendance of the student by the institution. For a student enrolled as part of a consortium agreement, the student must be considered to be enrolled full-time at the home institution to be certified.**

*[(I)](H)* An applicant may change *[his/her]* his approved institution choice *[prior to the beginning of the first day of classes]* by the established deadline and may transfer between approved institutions during the academic year. Failure to notify the *[coordinating board]* MDHE of such action may result in loss of the award.

*[(J)](I)* Award notifications will be sent to **initial applicants and renewal students** by the *[coordinating board]* MDHE once the awards have been determined. Notification of **initial and renewal** awards also will be sent to the student financial aid office at the approved institution where the applicant plans to enroll or has enrolled.

*[(K)](J)* The applicant's award will be sent to the approved institution to be endorsed by the applicant *[in accordance with the requirements of subsection (3)(B) of this rule]*. **The institution shall retain the portion of the award that the student owes for expenses and promptly give the applicant any remaining funds.**

*[(L)]* *Should an applicant withdraw prior to the end of the approved institution's refund period for the period of the scholarship, then a refund shall be calculated and made to the coordinating board by the approved institution within forty (40) days from the day on which the applicant withdraws. The amount of the refund will be calculated by the approved institution based on the refund formula of that institution.]*

**(6) Information Sharing Policy.** All information on an individual's academic scholarship program application will be shared with the financial aid office of the institution to which the individual has applied or is attending to permit verification of data submitted. Information may be shared with federal financial aid offices if necessary to verify data furnished by the state or federal governments as provided for in the Privacy Act of 1974, 5 U.S.C. sections 552, 552a.

*AUTHORITY: section 173.250, RSMo [2000] Supp. 2007. Original rule filed Nov. 14, 1986, effective Feb. 28, 1987. For intervening history, please consult the Code of State Regulations. Amended: Filed Dec. 15, 2008.*

*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 Higher Education, Financial Assistance, Outreach, and Proprietary School Certification, Kelli Reed, Student Assistance Associate, 3515 Amazonas Drive, 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 6—DEPARTMENT OF HIGHER EDUCATION  
Division 10—Commissioner of Higher Education  
Chapter 2—Student Financial Assistance Program**

**PROPOSED AMENDMENT**

**6 CSR 10-2.140 Institutional Eligibility for Student Participation.** The commissioner of higher education is amending the purpose and sections (1) through (6).

*PURPOSE: This amendment revises the institutional eligibility rule in order to consolidate the criteria for public and private institutions of higher education to participate in state student assistance programs.*

*PURPOSE: This rule sets forth policies and procedures of the Coordinating Board for Higher Education regarding the certification of public and private institutions of higher education so their full-time students may qualify for participation in [the Access Missouri Financial Assistance program] any state student assistance programs.*

(1) Definitions.

*[(A)]* *Access Missouri shall mean the Access Missouri Financial Assistance Program set forth in sections 173.1101–173.1107, RSMo.]*

*[(B)](A)* Approved institution means any institution located in the state of Missouri that meets the requirements set forth in section 173.1102(2) or (3), RSMo[,]; that has been approved under 6 CSR 10-2.140[,]; and that has been approved to participate in the federal student financial assistance programs created in Title IV of the Higher Education Act of 1965, as amended.

*[(C)](B)* Approved private institution means an educational institution as defined in section 173.1102(2), RSMo.

*[(D)](C)* Approved public institution means an educational institution as defined in section 173.1102(3), RSMo.

*[(E)](D)* CBHE means the Coordinating Board for Higher Education created by section 173.005, RSMo.

*[(F)](E)* Department means the Department of Higher Education created by section 173.005, RSMo.

**(F) Expenses shall mean any charges the student owes to the institution that can be paid with state student assistance program funds as defined by each state student assistance program.**

**(G) His, him, or he shall apply equally to the female as well as the male sex [where applicable in this rule].**

**(H) Standard admission policies shall mean policies approved and published by the approved institution to admit [special students and students with a certificate of graduation from high school or the equivalent of that certificate] students to the institution.**

**(I) State student assistance program shall be any financial aid program created by Missouri statute that charges the CBHE with program administration and that establishes institutional eligibility through criteria consistent with section 173.1102, RSMo, as determined by the CBHE.**

(2) Policy.

*[(A)]* *The CBHE is charged by statute to promulgate reasonable rules and regulations to affect the purposes of the Access Missouri program.]* In establishing this rule of institutional eligibility, the CBHE is guided principally by the *Constitution of Missouri*; the provisions of section[s] 173.1101–173.1107 **173.1102**, RSMo; and the decisions of the Missouri Supreme Court construing the laws of the state.

*[(B)]* *The CBHE will administer the Access Missouri program as a need-based student financial assistance program to assist financially qualified full-time students enrolled in approved institutions of higher education.]*

## (3) Institutional Eligibility.

(A) Only institutions certified by the CBHE as approved public or private institutions may participate in *[the Access Missouri] any state student assistance program*.

(B) Public and private institutions are eligible to participate in *[the Access Missouri program] state student assistance programs* only if they permit faculty members to select textbooks without influence or pressure from any source in order to be approved institutions. This requirement is in addition to requirements set forth in sections 173.1102(2) and (3), RSMo, and elsewhere in this rule. Selection of textbooks within individual departments or schools by faculty curriculum committees shall not be considered inconsistent with this requirement.

(4) The CBHE shall assign institutions to appropriate institutional groups based on length of program, institutional *[organization] structure*, and other criteria it considers applicable to such assignment.

## (5) Institutional Responsibilities.

(A) Approved institutions shall/—/:

1. Admit students based on the institution's standard admission policies;

2. Submit a copy of the institution's policy on satisfactory academic progress for the records of the CBHE;

3. Establish fair and equitable refund policies covering tuition, fees, and, where applicable, room and board charges. The refund policy shall be the same policy used by the institution for refunding all federal Title IV financial aid included in the Higher Education Act of 1965;

4. Systematically organize all student records (student financial aid, registrar, business office) pertaining to students who receive *[Access Missouri] state student assistance program* awards to be made readily available for review upon request by the CBHE. **The retention period for these records shall be the same period used by the institution to comply with federal Title IV program requirements included in the Higher Education Act of 1965;** and

5. Verify each *[Access Missouri] state student assistance program* award recipient's eligibility by transmitting the student's record to the *[CBHE] department* by the *[annual]* deadline published by the *[CBHE for the current academic year] department*. **Funds must be delivered not more than ten (10) business days after this verification or eligibility must be reconfirmed by the institution before delivery.**

(B) **Before the approved institution delivers the state student assistance program funds to an applicant, the approved institution must require the applicant to provide affirmative proof that the applicant is a United States (U.S.) citizen, permanent resident of the U.S., or lawfully present in the U.S., in accordance with the rules of the state student assistance program. Students who are U.S. citizens or permanent residents of the U.S. need only provide this proof before the first time they receive an award and shall not be required to provide it before they receive subsequent awards. Students who are not U.S. citizens or permanent residents of the U.S. must present affirmative proof annually.**

*[(B)](C)* When the approved institution receives the *[Access Missouri] state student assistance program* funds for the awards made by the CBHE, the approved institution must/—/:

*[1. Determine if the applicant is enrolled full-time and is making satisfactory progress in his course of study according to standards determined by the approved institution and 6 CSR 10-2.140;]*

*[2.]1.* Deliver the *[Access Missouri] state student assistance program* funds to the *[Access Missouri] award* recipient in the amount determined by the CBHE using the institution's standard award delivery procedures, **obtain the applicant's endorsement when necessary, [retaining] retain** the portion of the *[Access Missouri] state student assistance award* that the applicant owes to

**that institution** for *[education-related] expenses, [(tuition, fees, room and board, and/or other education-related expenses) to that institution]* and promptly give the applicant any remaining funds;

*[3.]2.* Return the applicant's *[Access Missouri] award* to the CBHE within thirty (30) days of learning he is no longer eligible to receive an award, if this is determined prior to the delivery of funds to the applicant;

*[4.]3.* Be responsible for the repayment of any funds sent to it by the CBHE within thirty (30) days of learning *[either] any* of the following:

A. The institution delivered *[Access Missouri] funds* to an **ineligible** applicant *[not eligible under the Access Missouri program]* if the award was based on erroneous, improper, or misleading information provided by the institution to the CBHE; or

B. The institution delivered the *[Access Missouri award]* funds to a person other than the one to whom the CBHE has directed the funds be delivered; *[and] or*

C. **The award amount for an eligible student exceeded the maximum amount for which the student was eligible; and**

*[5.]4.* Determine and calculate the amount of refunds to the CBHE based on the institution's refund formula for applicants who withdraw. The funds must be returned to the CBHE within thirty (30) days of the determination a withdrawal has occurred.

*[(C)](D)* The CBHE may refuse to make *[Access Missouri] state student assistance awards* to applicants who attend institutions that fail to make timely refunds to the CBHE as provided above.

## (6) Procedures.

(B) Any institution not designated an approved institution on the effective date of this rule shall make application to the CBHE to be certified as an approved institution **and shall sign participation agreements for all state student assistance programs in which the institution will participate** in order for students attending the institution to be eligible *[to participate in the Access Missouri program]* to receive **state student assistance awards**. Applications for approved institution status shall be made on forms provided therefore by the CBHE. Upon certification of an institution as an approved institution by the CBHE, the status of an approved institution shall continue for a period of **no more than three (3) years** from the date of certification unless earlier terminated for changes in operation specified in 6 CSR 10-2.140(3) or 6 CSR 10-2.140(6)(C).

(C) During a period in which an institution is certified as an approved institution, if a substantial change occurs in the institution's governing structure; in the institution's hiring policies pertaining to administration, faculty, and staff; in the institution's admissions policies; in the institution's textbook selection procedures; in the level of programs or degrees offered by the institution; in the institution's qualification for accreditation by the Higher Learning Commission or other United States Department of Education-recognized accrediting agency; in the institution's record of compliance with lawfully promulgated CBHE policies and procedures; or in any other matter affecting the criteria set forth in sections 173.*[205]1102*(2) or (3), RSMo, the CBHE may consider whether to terminate the institution's approved status because of such change. Institutions shall notify the CBHE in writing within thirty (30) days after any such change occurs. Before the CBHE makes a decision regarding the status of an approved institution, the CBHE may, at its own discretion, hold one (1) or more public hearing(s) under the procedures set forth in subsection (6)(G) of this rule.

(E) If an approved institution desires to continue its status as an approved institution, it may apply for renewal of its approved institution status by filing an application for recertification as an approved institution **and signing participation agreements for all state student assistance programs in which the institution will participate** at least sixty (60) days before the date its certification would normally expire. An application for recertification as an approved institution shall be made to the CBHE on forms provided by the CBHE.

*AUTHORITY: sections 173.236, 173.254, 173.260, and 173.262, RSMo 2000, sections 173.250 and 173.1103, RSMo Supp. 2007, and 173.234, HB 1678, Second Regular Session, Ninety-fourth General Assembly, 2008. Emergency rule filed Aug. 28, 2007, effective Sept. 7, 2007, expired March 4, 2008. Original rule filed Oct. 12, 2007, effective March 30, 2008. Amended: Filed Dec. 15, 2008.*

*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 Higher Education, Financial Assistance, Outreach, and Proprietary School Certification, Kelli Reed, Student Assistance Associate, 3515 Amazonas Drive, 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 6—DEPARTMENT OF HIGHER EDUCATION  
Division 10—Commissioner of Higher Education  
Chapter 2—Student Financial Assistance Program**

**PROPOSED AMENDMENT**

**6 CSR 10-2.150** *[Student Eligibility and Application Procedures]* **Access Missouri Financial Assistance Program.** The commissioner of higher education is changing the title of the rule, adding section (2), amending sections (1) and (5), and renumbering sections as needed.

*PURPOSE: These amendments update definitions and the award policy, and add institutional responsibility requirements.*

(1) Definitions.

**(K) Expenses mean any educational-related expenses including, but not limited to, tuition, fees, and room and board.**

***[(K)](L)* Full-time student means a student who is enrolled in at least twelve (12) semester hours, eight (8) quarter hours, or the equivalent in another measurement system, but not less than the respective number sufficient to secure the certificate or degree toward which the student is working in no more than the number of semesters, or their equivalent, normally required by the institution for the program in which the student is enrolled. **Provided, however, that an otherwise eligible student having a disability as defined by Title II of the Americans with Disabilities Act (42 U.S.C. 12101-12213) who, because of his or her disability, is unable to satisfy the statutory minimum requirements for full-time status under Title IV student aid programs shall be considered by the approved institution to be a full-time student and shall be considered to be making satisfactory academic progress, as defined in subsection (1)(R) of this rule, while carrying a minimum of six (6) credit hours or their equivalent at the approved institution.****

***[(L)](M)* His, him, or he shall apply equally to the female as well as the male sex where applicable in this rule.**

***[(M)](N)* Initial recipient means a student who qualifies under section 173.1104, RSMo, has filed an accurate and complete application by the deadline established by the CBHE for the Access Missouri program, and has not received an Access Missouri award in any prior academic year.**

***[(N)](O)* Increment group shall mean a group organized by EFC in five hundred dollar (\$500) increments into which all eligible applicants are placed.**

***[(O)](P)* Renewal recipient means a student who received an Access Missouri award, who meets the requirements set forth in section 173.1104, RSMo, and who has filed an accurate and complete application by the deadline established by the CBHE for the Access Missouri program.**

***[(P)](Q)* Residency, for the purpose of this rule, shall be determined by reference to the standards set forth in the determination of student residency rule, 6 CSR 10-3.010.**

***[(Q)](R)* *[Satisfactory academic progress means that a student is successfully completing sufficient courses in his course of study to secure the certificate or degree toward which he is working in no more than the number of semesters or their equivalent normally required by the institution in which the student is enrolled.] Satisfactory academic progress shall be a cumulative grade point average (CGPA) of at least two and one-half (2.5) on a four-point (4.0) scale, or the equivalent on another scale, and, with the exception of grade point average, as otherwise determined by the approved institution's policies as applied to other students at the approved institution receiving assistance under Title IV financial aid programs included in the Higher Education Act of 1965. The calculation of CGPA shall be based on the approved institution's policies as applied to other students in similar circumstances.***

**(2) Responsibilities of Institutions of Postsecondary Education. Institutions participating in the Access Missouri program must meet the requirements set forth in 6 CSR 10-2.140 Institutional Eligibility for Student Participation.**

***[(2)](3)* Basic Eligibility Policy. To qualify for an Access Missouri award, an initial or a renewal recipient, at the time of his application and throughout the period during which he receives the award, must meet the requirements set forth in section 173.1104, RSMo.**

***[(3)](4)* Application and Evaluation Policy.**

(A) The CBHE shall annually prescribe the time and method for filing applications for financial assistance under the Access Missouri program. It shall make announcement of its action in these respects.

(B) Students shall apply annually for financial assistance under the Access Missouri program by completing and submitting the federal need-based aid application form as prescribed by the United States Department of Education.

(C) The department will evaluate each student's application for an Access Missouri award according to the student's EFC as calculated based on information provided in the student's federal need-based aid application form completed and submitted as prescribed by the United States Department of Education.

(D) Annual award amounts for renewal recipients may be increased or decreased based on a change in the financial condition of the applicant, the financial condition of the applicant's spouse or parents, or availability of funds for distribution during that award year.

(E) Exceptions to the department's procedures applicable to the Access Missouri program and reconsideration of applicants' need will take place only in unusual circumstances, such as death or disability of a wage earner, illness, or other economic reversal, and will be considered on an individual basis only upon written request, submitted to the Missouri Department of Higher Education, Access Missouri Program, 3515 Amazonas Drive, Jefferson City, MO 65109.

***[(4)](5)* Award Policy.**

(A) Access Missouri awards shall be allotted for one (1) award year.

(B) A renewal recipient may continue to receive a grant under the Access Missouri program so long as the applicant:

1. Maintains *[a cumulative grade point average of at least two and five-tenths (2.5) on a four-point (4.0) scale, or the equivalent on another scale]* satisfactory academic progress;

*[2. Meets the satisfactory academic progress requirements as determined by the approved institution in which he is enrolled and as applied to other students at the approved institution receiving assistance under Title IV financial aid programs included in the Higher Education Act of 1965, with the exception of grade point average;]*

*[3.]2.* Otherwise meets the criteria of the Access Missouri program; and

*[4.]3.* Has not exceeded—

A. Five (5) semesters at two (2)-year institutions; or

B. A total of ten (10) semesters or fifteen (15) quarters at a four (4)-year institution or any combination of institutions.

(C) Initial and renewal recipients who meet the eligibility requirements set forth in sections 173.1101 through 173.1107, RSMo, and this rule shall be eligible for an Access Missouri award, with minimum and maximum annual award amounts as follows, **subject to the availability of funds appropriated by the legislature:**

1. One thousand dollars (\$1,000) maximum and three hundred dollars (\$300) minimum for students attending institutions classified as part of the public two (2)-year sector;

2. Two thousand one hundred fifty dollars (\$2,150) maximum and one thousand dollars (\$1,000) minimum for students attending institutions classified as part of the public four (4)-year sector, including Linn State Technical College; and

3. Four thousand six hundred dollars (\$4,600) maximum and two thousand dollars (\$2,000) minimum for students attending approved private institutions.

(D) All students with an EFC of twelve thousand dollars (\$12,000) or less shall receive at least the minimum annual award amount for his institution, **subject to the availability of funds appropriated by the legislature.** Maximum annual award amounts for recipients with an EFC above seven thousand dollars (\$7,000) shall be reduced by ten percent (10%) of the maximum EFC for his increment group.

(E) **Any award amount shall be reduced by the amount of a student's reimbursement pursuant to section 160.545, RSMo.**

*[(E)](F)* Maximum annual award amounts will be reduced as provided in section 173.1105, RSMo, across all institutional groups in order to ensure the total funds awarded through the Access Missouri program do not exceed the funds appropriated. If sufficient funds are appropriated, the department shall increase the number of recipients by raising the EFC cutoff once the statutory maximum awards have been met.

*[(F)](G)* A student who has been denied an Access Missouri award for lack of satisfactory academic progress *[for the grade point average requirement at 6 CSR 10-2.150(4)(B)1.]* may not receive another Access Missouri award until the enrollment period after the applicable standard has once again been met.

*[(G)](H)* No Access Missouri awards will be granted to a student after—

1. A baccalaureate degree has been granted to the student;

2. The required hours for a baccalaureate degree have been completed by a student; or

3. The student has completed one hundred fifty (150) semester hours or two hundred twenty-five (225) quarter hours of coursework.

*[(H)](I)* Access Missouri awards will be made for use during the normal academic year, but no funds for Access Missouri awards will be granted for use for summer school.

*[(I)](J)* No Access Missouri award will be made retroactive to a previous academic year. An Access Missouri award will be made retroactive to a previous semester only upon the sole discretion of the department.

*[(J)](K)* Access Missouri awards will be issued only after certification of full-time attendance of the student by the institution. For a student enrolled as part of a consortium agreement, the student must be considered to be enrolled full-time at the home institution to be certified.

*[(K)](L)* Only one-half the annual Access Missouri award will be issued in a semester of that award year.

**(M) The applicant's award will be sent to the approved institution to be endorsed by the applicant. The institution shall retain the portion of the award that the student owes for expenses and promptly give the applicant any remaining funds.**

*[(L)](N)* An applicant's failure to provide required information by the established deadlines may result in loss of the Access Missouri award.

*[(M)](O)* The CBHE has the discretion to withhold payments of any Access Missouri awards after initiating an inquiry into the eligibility or the continued eligibility of a student or into the approved status of an institution.

*[(N)](P)* A student may transfer the Access Missouri award from one approved public or private institution to another without losing eligibility for assistance, but the CBHE shall make any necessary adjustments in the amount of the award.

*[(5)](6)* Information Sharing Policy. All information on an individual's Access Missouri application will be shared with the financial aid office of the institution to which the individual has applied, or is attending, to permit verification of data submitted. Information may be shared with federal financial aid offices if necessary to verify data furnished by the state or federal governments as provided for in the Privacy Act of 1974, 5 U.S.C. sections 552, 552a.

*AUTHORITY: section 173.1103, RSMo Supp. 2007. Emergency rule filed Aug. 28, 2007, effective Sept. 7, 2007, expired March 4, 2008. Original rule filed Oct. 12, 2007, effective March 30, 2008. Amended: Filed Dec. 15, 2008.*

*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 Higher Education, Financial Assistance, Outreach, and Proprietary School Certification, Kelli Reed, Student Assistance Associate, 3515 Amazonas Drive, 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 6—DEPARTMENT OF HIGHER EDUCATION Division 10—Commissioner of Higher Education Chapter 2—Student Financial Assistance Program

### PROPOSED RULE

#### 6 CSR 10-2.160 War Veteran's Survivors Grant Program

*PURPOSE: The War Veteran's Survivors Grant, established by section 173.234, RSMo, authorizes the Coordinating Board for Higher Education to provide grants for tuition assistance, room and board, and books for eligible undergraduate students who meet the criteria established in statute. This administrative rule sets forth eligibility requirements for War Veteran's Survivors Grant award recipients and the responsibilities that approved postsecondary institutions must fulfill for participation in the program.*

(1) Definitions.

(A) Academic year shall be from July 1 of any year through June 30 of the following year.

(B) Applicant means a survivor who has filed an accurate and complete application to receive a War Veteran's Survivors Grant award, who has been certified as eligible by the Missouri Veteran's Commission, and who otherwise qualifies to receive such award under section 173.254, RSMo.

(C) Award shall be an amount of money paid by Missouri to a qualified applicant for tuition assistance, room and board, and books pursuant to the provisions of this rule and section 173.234, RSMo.

(D) Award year shall be from July 1 of any year through June 30 of the following year, excluding summer terms.

(E) Books are any books or related supplementary materials required for any course for which tuition was paid in whole or in part by an award under this section.

(F) Consortium agreement means a written agreement between two (2) or more approved institutions that allows students to take courses at a school other than the home school and have those courses count toward the degree or certificate at the home school and that complies with United States Department of Education requirements for federal student financial assistance.

(G) Coordinating board, CBHE, or board is the Coordinating Board for Higher Education created by section 173.005, RSMo.

(H) Department means the Department of Higher Education created by section 173.005, RSMo.

(I) Grant shall be the War Veteran's Survivors Grant established in section 173.234, RSMo.

(J) His, him, or he shall apply equally to the female as well as the male sex.

(K) Initial recipient means any applicant who meets the criteria set forth in section 173.234, RSMo, and in this regulation; has filed an accurate and complete application by the deadline established by the CBHE for the War Veteran's Survivors Grant program; and has not received a War Veteran's Survivors Grant award in any prior academic year.

(L) Institution of postsecondary education or approved institution shall be any Missouri public institution of postsecondary education as defined in section 173.1102(3), RSMo.

(M) Renewal recipient means any applicant who has received a War Veteran's Survivors Grant award; who meets the requirements set forth in section 173.234, RSMo, and in this regulation; and who has filed an accurate and complete application by the deadline established by the department for the War Veteran's Survivors Grant program.

(N) Satisfactory academic progress means meeting the requirements established by the approved institution in which the student is enrolled for students at the approved institution to receive assistance under Title IV financial aid programs included in the Higher Education Act of 1965, with the exception of grade point average.

(O) Survivor shall be any child up to twenty-five (25) years of age or spouse of a war veteran as defined in section 173.234.1(5), RSMo.

(P) Tuition is any tuition or incidental fee, or both, charged by an institution of postsecondary education for attendance at the institution by a student as a resident of this state.

(Q) Tuition assistance is the component of the award related to the actual tuition paid by the student up to the amount charged to a Missouri resident at the University of Missouri-Columbia.

(2) Responsibilities of Institutions of Postsecondary Education.

(A) Institutions participating in the War Veteran's Survivors Grant program must meet the requirements set forth in 6 CSR 10-2.140 Institutional Eligibility for Student Participation.

(B) Institutions must retain highlighted book receipts documenting each eligible student's book costs and provide a copy of the receipts to the department upon request.

(3) Eligibility Policy. To qualify for an award, an initial or renewal recipient, at the time of his application and throughout the period during which he receives the award, must—

(A) Meet the requirements set forth in section 173.234, RSMo, and this regulation;

(B) Be a U.S. citizen, permanent resident, or otherwise lawfully present in the United States, in accordance with section 208.009, RSMo; and

(C) Be enrolled or accepted for enrollment at least half-time in an approved institution where half-time enrollment is determined by the standards of the institution.

(4) Application and Evaluation.

(A) The department shall annually prescribe the time and method for filing applications for an award under the War Veteran's Survivors Grant program. It shall make announcement of its action in these respects.

(B) Students shall apply annually for an award under the War Veteran's Survivors Grant program by completing and submitting the application form as prescribed by the department.

(C) The department will evaluate each application for a War Veteran's Survivors Grant award according to the certification provided by the Missouri Veteran's Commission and according to the extent to which each applicant meets the requirements set forth in this regulation and section 173.234, RSMo.

(5) Award Policy.

(A) War Veteran's Survivors Grant awards shall be allotted for one (1) award year. Award amounts will be calculated and issued for each semester of that award year.

(B) Within the limits of amounts appropriated therefore, a renewal recipient may continue to receive an award so long as he:

1. Maintains a cumulative grade point average of at least two and one-half (2.5) on a four-point (4.0) scale, or its equivalent;
2. Maintains satisfactory academic progress; and
3. Otherwise meets the criteria of the War Veteran's Survivors Grant program.

(C) Provided that sufficient funds are appropriated, initial and renewal recipients who meet the eligibility requirements set forth in section 173.234, RSMo, and this rule shall be eligible for a War Veteran's Survivors Grant award amounting to the sum of the following:

1. The actual tuition charged for the number of hours in which the initial or renewal recipient is enrolled or accepted for enrollment at the approved institution. The amount of the tuition assistance shall not exceed the amount of tuition charged a Missouri resident enrolled in the same number of hours at the University of Missouri-Columbia. For programs measured in clock hours rather than credit hours, the institution shall use the conversion formula of fifteen (15) classroom hours equal one (1) credit hour;

2. An allowance of up to two thousand dollars (\$2,000) per semester for room and board, as determined by the department; and

3. The actual cost of the survivor's books at the approved institution where the initial or renewal recipient is enrolled or accepted for enrollment as documented with actual receipts for books purchased, not to exceed five hundred dollars (\$500) per semester.

(D) Within the amounts appropriated for awards, the coordinating board shall provide awards for up to twenty-five (25) applicants annually to attend approved institutions.

(E) Eligible renewal recipients shall have award priority. If funds are not available to make awards to all applicants who would otherwise meet the requirements to be renewal recipients, the department will make awards according to priority based on the earliest complete and accurate applications received by the department.

(F) Applicants who qualify as initial recipients under the provisions of this rule shall receive awards if sufficient funds are appropriated and subject to the priorities described above.

(G) If funds are not available to make awards to all applicants who



would otherwise meet the requirements to be initial recipients, the department will make awards according to priority based on the earliest complete and accurate applications received by the department.

(H) Eligible applicants who do not receive an award due to insufficient grant funds shall be put on a waiting list. If the waiting list of eligible applicants exceeds fifty (50), the CBHE may petition the general assembly to expand the quota. If the quota is not expanded, then the eligibility status of these eligible applicants will be extended to the following academic year and the applicant will be considered for an award in accordance with the criteria in subsections (5)(D)–(G) of this rule.

(I) Award notifications will be sent to the eligible applicants by the department once the applications have been approved and the award amounts have been determined. Notification of award eligibility will also be sent to the student financial aid office at the approved institution where the student plans to enroll or has enrolled.

(J) An applicant who has been denied a War Veteran's Survivors Grant award for lack of satisfactory academic progress or failure to maintain the grade point average requirement in paragraphs (5)(B)1.–2. of this rule may not receive another War Veteran's Survivors Grant award until the enrollment period after the applicable standard has once again been met.

(K) No War Veteran's Survivors Grant award will be granted to an applicant after completion of the first baccalaureate degree, regardless of age.

(L) War Veteran's Survivors Grant awards will be made for use during the academic year, but no funds for War Veteran's Survivors Grant awards will be granted for use for summer school.

(M) No War Veteran's Survivors Grant award will be made retroactive to a previous academic year. A War Veteran's Survivors Grant award will be made retroactive to a previous semester only upon the sole discretion of the department.

(N) War Veteran's Survivors Grant awards will be issued only after certification of attendance of the student by the institution.

(O) In order to receive an award for attendance at more than one (1) institution during a single semester, applicants must be enrolled in a consortium agreement. Awards based on consortium agreements will be issued to the home school.

(P) An applicant's failure to provide an accurate and complete application or any additional information by any deadline may result in loss of the War Veteran's Survivors Grant award.

(Q) The CBHE may withhold payment of any War Veteran's Survivors Grant award after initiating an inquiry into the initial or continued eligibility of a student or into the approved status of an institution.

(R) A student may transfer the War Veteran's Survivors Grant award from one (1) approved public institution of postsecondary education to another without losing eligibility for assistance, but the CBHE shall make any necessary adjustments in the amount of the award.

(6) Information Sharing Policy. All information on an individual's War Veteran's Survivors Grant application will be shared with the financial aid office of the institution to which the individual has applied or that the individual is attending to permit verification of data submitted. Information may be shared with federal financial aid officers if necessary to verify data furnished by the state or federal governments as provided for in the Privacy Act of 1974, 5 U.S.C. sections 552, 552a.

*AUTHORITY: section 173.234, HB 1678, Second Regular Session, Ninety-fourth General Assembly, 2008. Original rule filed Dec. 15, 2008.*

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Department of Higher Education, Financial Assistance, Outreach, and Proprietary School Certification, Kelli Reed, Student Assistance Associate, 3515 Amazonas Drive, 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 6—DEPARTMENT OF HIGHER EDUCATION  
Division 10—Commissioner of Higher Education  
Chapter 2—Student Financial Assistance Program**

**PROPOSED RULE**

**6 CSR 10-2.170 Kids' Chance Scholarship Program**

*PURPOSE: The Kids' Chance Scholarship Program, established by section 173.254, RSMo, authorizes the Department of Higher Education to provide scholarships for the children of workers who were seriously injured or died in work-related accidents or of occupational diseases covered by workers' compensation and compensable pursuant to Chapter 287, RSMo, to attend a college, university, or accredited vocational institution of their choice. This administrative rule sets forth eligibility requirements for Kids' Chance Scholarship award recipients and the responsibilities that approved postsecondary institutions must fulfill for the administration of the program.*

(1) Definitions.

(A) Academic year shall be from July 1 of any year through June 30 of the following year.

(B) Applicant means an eligible child, as defined in this rule, who applies for a Kids' Chance scholarship.

(C) Award year shall be from July 1 of any year through June 30 of the following year, excluding summer terms.

(D) Consortium agreement means a written agreement between two (2) or more approved institutions that allows students to take courses at a school other than the home school and have those courses count toward the degree or certificate at the home school and that complies with United States Department of Education requirements for federal student financial assistance.

(E) Coordinating board, CBHE, or board is the Coordinating Board for Higher Education created by section 173.005, RSMo.

(F) Department means the Department of Higher Education created by section 173.005, RSMo.

(G) EFC means Expected Family Contribution, the amount of money a student and family should pay toward the cost of postsecondary education as calculated annually by the United States Department of Education as a result of an official federal need analysis based on the student's federal need-based aid application form.

(H) Eligible child is a natural child, adopted child, or stepchild who meets the requirements set forth in section 173.254, RSMo, and this regulation.

(I) His, him, or he shall apply equally to the female as well as the male sex.

(J) Initial recipient means any applicant who has filed an accurate and complete application by the deadline established by the CBHE for the Kids' Chance program and has not received a Kids' Chance award in any prior academic year.

(K) Institution of postsecondary education or approved institution means any institution located in the state of Missouri that meets the requirements set forth in sections 173.1102(2) or (3), RSMo, and that has been approved under 6 CSR 10-2.140.

(L) Kids' Chance or scholarship program shall mean the Kids'



Chance Scholarship Program set forth in sections 173.254 through 173.258, RSMo.

(M) Kids' Chance Inc. of Missouri means the registered Missouri nonprofit corporation established to provide scholarships for tuition, education materials, living expenses, and other related incidental expenses for education to children of employees who have been seriously injured or killed in work-related accidents which have been either judicially determined to be, or accepted as, compensable under the Missouri Workers' Compensation Law, or any corresponding provisions of any future Missouri law.

(N) Missouri residency, for the purpose of this rule, shall be determined by reference to the standards set forth in the determination of student residency rule, 6 CSR 10-3.010.

(O) Renewal recipient means any applicant who has received a Kids' Chance award and who has filed an accurate and complete application by the deadline established by the department for the Kids' Chance program.

(P) Satisfactory academic progress means meeting the requirements established by the approved institution in which the student is enrolled for students at the approved institution to receive assistance under Title IV financial aid programs included in the Higher Education Act of 1965, with the exception of grade point average.

(Q) Scholarship assistance, award, or funds shall be an amount of money paid by Missouri to a qualified applicant pursuant to the provisions of this rule.

(R) Serious injury shall be an injury that led to a paid settlement or judicial award that can be identified by the injured party's inclusion on the Dependent Outreach List provided by the Missouri Division of Worker's Compensation.

(2) Responsibilities of Institutions of Postsecondary Education. Institutions participating in the Kids' Chance program must meet the requirements set forth in 6 CSR 10-2.140 Institutional Eligibility for Student Participation.

(3) Eligibility Policy. To qualify for an award, an initial or renewal recipient, at the time of his application and throughout the period during which he receives the award, must:

(A) Meet the requirements set forth in section 173.254, RSMo, and this regulation;

(B) Be a U.S. citizen, permanent resident, or otherwise lawfully present in the United States, in accordance with section 208.009, RSMo;

(C) Be enrolled or accepted for enrollment at least half-time in an approved institution, where half-time enrollment is determined by the standards of the institution;

(D) Establish financial need by having an EFC that is less than or equal to the maximum EFC used to determine eligibility for the Access Missouri Student Financial Assistance Program;

(E) Not be enrolled or intend to use the award to enroll in a course of study leading to a degree in theology or divinity; and

(F) Complete an application for scholarship assistance according to the provisions of this rule.

(4) Application and Evaluation.

(A) The department shall annually prescribe the time and method for filing applications for an award under the Kids' Chance program. It shall make announcement of its action in these respects.

(B) Students shall apply annually for an award under the Kids' Chance program by completing and submitting the application form as prescribed by the department.

(C) The department will evaluate each application for a Kids' Chance award based on the information provided by Kids' Chance Inc. of Missouri and according to the extent to which each applicant meets the requirements set forth in this regulation and section 173.254, RSMo.

(5) Award Policy.

(A) Kids' Chance awards shall be allotted for one (1) award year,

but an applicant shall be eligible for renewed assistance until he has reached the age of twenty-two (22) years, except the applicant may receive such scholarship assistance through the completion of the semester or similar grading period in which the eligible child reaches his twenty-second year.

(B) Award amounts will be calculated and issued for each semester of that award year.

(C) Within the limits of amounts appropriated therefore, a renewal recipient may continue to receive an award so long as he:

1. Maintains a cumulative grade point average of at least two and one-half (2.5) on a four-point (4.0) scale, or its equivalent;

2. Maintains satisfactory academic progress; and

3. Otherwise meets the criteria of the Kids' Chance program.

(D) Provided that sufficient funds are appropriated, initial and renewal recipients who meet the eligibility requirements set forth in section 173.254, RSMo, and this rule shall be eligible for a Kids' Chance award, with the maximum scholarship award amount for each semester being the least of:

1. The actual tuition as defined in section 173.260, RSMo, charged at the approved institution where the individual is enrolled or accepted for enrollment for the number of credit hours in which the individual is enrolled; or

2. The amount of tuition charged a Missouri resident at the University of Missouri for attendance based on the same number of credit hours in which the individual is enrolled.

(E) The applicant's scholarship award shall be reduced when necessary pursuant to section 173.093, RSMo.

(F) Eligible renewal recipients shall have award priority. If funds are not available to make awards to all applicants who would otherwise meet the requirements to be renewal recipients, the department will make awards first according to priority based on the students with the lowest EFCs and then on the earliest complete and accurate applications received by the department.

(G) Applicants who qualify as initial recipients under the provisions of this rule shall receive awards if sufficient funds are appropriated and subject to the priorities described above.

(H) If funds are not available to make awards to all applicants who would otherwise meet the requirements to be initial recipients, the department will make awards first according to priority based on the students with the lowest EFCs and then on the earliest complete and accurate applications received by the department.

(I) Award notifications will be sent to the eligible applicants by the department once the applications have been approved. Notification of award eligibility will also be sent to the student financial aid office at the approved institution where the student plans to enroll or has enrolled.

(J) An applicant who has been denied a Kids' Chance award for lack of satisfactory academic progress or failure to maintain the grade point average requirement in paragraphs (5)(C)1.-2. of this rule may not receive another Kids' Chance award until the enrollment period after the applicable standard has once again been met.

(K) Kids' Chance awards will be made for use during the academic year, but no funds for Kids' Chance awards will be granted for use for summer school.

(L) No Kids' Chance award will be made retroactive to a previous academic year. A Kids' Chance award will be made retroactive to a previous semester only upon the sole discretion of the department.

(M) Kids' Chance awards will be issued only after certification of at least half-time attendance of the student by the institution. For students enrolled as part of a consortium agreement, the student must be considered to be enrolled at least half-time at the home institution to be certified.

(N) An applicant's failure to provide an accurate and complete application or any additional information by any deadline may result in loss of the Kids' Chance award.

(O) The CBHE may withhold payment of any Kids' Chance award after initiating an inquiry into the initial or continued eligibility of a student or into the approved status of an institution.

(P) A student may transfer the Kids' Chance award from one

approved institution in Missouri to another without losing eligibility for assistance, but the CBHE shall make any necessary adjustments in the amount of the award.

(6) Information Sharing Policy. All information on an individual's Kids' Chance application will be shared with the financial aid office of the institution to which the individual has applied or that the individual is attending to permit verification of data submitted. Information may be shared with federal financial aid officers if necessary to verify data furnished by the state or federal governments as provided for in the Privacy Act of 1974, 5 U.S.C. sections 552, 552a.

*AUTHORITY:* section 173.254, RSMo 2000. Original rule filed Dec. 15, 2008.

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

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

*NOTICE TO SUBMIT COMMENTS:* Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Department of Higher Education, Financial Assistance, Outreach, and Proprietary School Certification, Kelli Reed, Student Assistance Associate, 3515 Amazonas Drive, 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 20—DEPARTMENT OF INSURANCE,  
FINANCIAL INSTITUTIONS AND PROFESSIONAL  
REGISTRATION**

**Division 2110—Missouri Dental Board  
Chapter 2—General Rules**

**PROPOSED AMENDMENT**

**20 CSR 2110-2.010 Licensure by Examination—Dentists.** The board is proposing to amend section (4).

*PURPOSE:* Pursuant to Executive Order 06-04, the Division of Professional Registration was transferred from the Department of Economic Development, Title 4, to the Department of Insurance, Financial Institutions and Professional Registration, Title 20. Therefore, references to 4 CSR 110 are being amended throughout the rule.

(4) In order to receive a certificate of registration and license to practice, each applicant shall—

(A) Meet all licensure requirements as specified in sections (1), (2), and (3); and

(B) Submit the initial licensure fee as specified in [4 CSR 110-2.170] **20 CSR 2110-2.170**.

*AUTHORITY:* sections 332.031, [RSMo Supp. 1997 and] 332.141, and 332.151, RSMo 2000 and section 332.181, RSMo [1994] Supp. 2007. This rule originally filed as 4 CSR 110-2.010. Original rule filed Dec. 12, 1975, effective Jan. 12, 1976. For intervening history, please consult the *Code of State Regulations*. Amended: Filed Dec. 12, 2008.

*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 Dental Board, PO Box 1367, Jefferson City, MO 65102, by facsimile at (573) 751-8216, or via email at dental@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**Title 20—DEPARTMENT OF INSURANCE,  
FINANCIAL INSTITUTIONS AND PROFESSIONAL  
REGISTRATION**

**Division 2110—Missouri Dental Board  
Chapter 2—General Rules**

**PROPOSED AMENDMENT**

**20 CSR 2110-2.030 Licensure by Credentials—Dentists.** The board is proposing to amend section (4).

*PURPOSE:* Pursuant to Executive Order 06-04, the Division of Professional Registration was transferred from the Department of Economic Development, Title 4, to the Department of Insurance, Financial Institutions and Professional Registration, Title 20. Therefore, references to 4 CSR 110 are being amended throughout the rule.

(4) In order to receive a certificate of registration and a license to practice, each applicant shall—

(A) Meet all licensure requirements as specified in sections (1), (2), and (3); and

(B) Submit the initial license fee as specified in [4 CSR 110-2.170] **20 CSR 2110-2.170**.

*AUTHORITY:* sections 332.031, RSMo Supp. 1997] and 332.211, RSMo [1994] 2000. This rule originally filed as 4 CSR 110-2.030. Original rule filed Dec. 12, 1975, effective Jan. 12, 1976. For intervening history, please consult the *Code of State Regulations*. Amended: Filed Dec. 12, 2008.

*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 Dental Board, PO Box 1367, Jefferson City, MO 65102, by facsimile at (573) 751-8216, or via email at dental@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**Title 20—DEPARTMENT OF INSURANCE,  
FINANCIAL INSTITUTIONS AND PROFESSIONAL  
REGISTRATION**

**Division 2110—Missouri Dental Board  
Chapter 2—General Rules**

**PROPOSED AMENDMENT**

**20 CSR 2110-2.050 Licensure by Examination—Dental Hygienists.** The board is proposing to amend section (4).

*PURPOSE:* Pursuant to Executive Order 06-04, the Division of Professional Registration was transferred from the Department of Economic Development, Title 4, to the Department of Insurance, Financial Institutions and Professional Registration, Title 20. Therefore, references to 4 CSR 110 are being amended throughout the rule.

(4) In order to receive a certificate of registration and license to practice, each applicant shall—

(A) Meet all licensure requirements as specified in sections (1), (2), and (3); and

(B) Submit the initial license fee as specified in [4 CSR 110-2.170] **20 CSR 2110-2.170**.

*AUTHORITY:* sections 332.031, [RSMo Supp. 1997 and] 332.231, 332.241, and 332.251, RSMo 2000 and section 332.261, RSMo [1994] Supp. 2007. This rule originally filed as 4 CSR 110-2.050. Original rule filed Dec. 12, 1975, effective Jan. 12, 1976. For intervening history, please consult the Code of State Regulations. Amended: Filed Dec. 12, 2008.

*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 Dental Board, PO Box 1367, Jefferson City, MO 65102, by facsimile at (573) 751-8216, or via email at dental@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 20—DEPARTMENT OF INSURANCE,  
FINANCIAL INSTITUTIONS AND PROFESSIONAL  
REGISTRATION  
Division 2110—Missouri Dental Board  
Chapter 2—General Rules**

**PROPOSED AMENDMENT**

**20 CSR 2110-2.090 Certification of Dental Specialists.** The board is proposing to amend section (2).

*PURPOSE:* Pursuant to Executive Order 06-04, the Division of Professional Registration was transferred from the Department of Economic Development, Title 4, to the Department of Insurance, Financial Institutions and Professional Registration, Title 20. Therefore, references to 4 CSR 110 are being amended throughout the rule.

(2) To apply for a specialty certificate, each applicant shall submit the following:

(B) A nonrefundable application fee as specified in [4 CSR 110-2.170] **20 CSR 2110-2.170** payable to the Missouri Dental Board;

*AUTHORITY:* section[s] 332.031, RSMo 2000 and section 332.171.2, RSMo Supp. [2004] 2007. This rule originally filed as

4 CSR 110-2.090. Original rule filed Dec. 12, 1975, effective Jan. 12, 1976. For intervening history, please consult the Code of State Regulations. Amended: Filed Dec. 12, 2008.

*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 Dental Board, PO Box 1367, Jefferson City, MO 65102, by facsimile at (573) 751-8216, or via email at dental@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 20—DEPARTMENT OF INSURANCE,  
FINANCIAL INSTITUTIONS AND PROFESSIONAL  
REGISTRATION  
Division 2110—Missouri Dental Board  
Chapter 2—General Rules**

**PROPOSED AMENDMENT**

**20 CSR 2110-2.130 Dental Hygienists.** The board is proposing to amend section (11).

*PURPOSE:* Pursuant to Executive Order 06-04, the Division of Professional Registration was transferred from the Department of Economic Development, Title 4, to the Department of Insurance, Financial Institutions and Professional Registration, Title 20. Therefore, references to 4 CSR 110 are being amended throughout the rule.

(11) For purposes of this rule, proof of competency means documentation verifying completion of didactic and clinical training and passage of competency testing of that training from a dental, dental hygiene, or dental assisting school accredited by the Commission on Dental Accreditation of the American Dental Association or a board-approved sponsor as defined in [4 CSR 110-2.240] **20 CSR 2110-2.240**.

*AUTHORITY:* sections 332.031 and 332.091, RSMo 2000 and sections 332.071 and 332.311, RSMo Supp. [2006] 2007. This rule originally filed as 4 CSR 110-2.130. Original rule filed Dec. 12, 1975, effective Jan. 12, 1976. For intervening history, please consult the Code of State Regulations. Amended: Filed Dec. 12, 2008.

*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 Dental Board, PO Box 1367, Jefferson City, MO 65102, by facsimile at (573) 751-8216, or via email at dental@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 20—DEPARTMENT OF INSURANCE,  
FINANCIAL INSTITUTIONS AND PROFESSIONAL  
REGISTRATION  
Division 2110—Missouri Dental Board  
Chapter 2—General Rules**

**PROPOSED AMENDMENT**

**20 CSR 2110-2.132 Dental Hygienists—Equipment Requirements for Public Health Settings.** The board is proposing to amend sections (1) and (2).

*PURPOSE:* Pursuant to Executive Order 06-04, the Division of Professional Registration was transferred from the Department of Economic Development, Title 4, to the Department of Insurance, Financial Institutions and Professional Registration, Title 20. Therefore, references to 4 CSR 110 are being amended throughout the rule.

(1) Any location where dental services are rendered pursuant to section 332.311, RSMo, and [4 CSR 110-2.131] **20 CSR 2110-2.131** must be equipped with the following:

(2) Occupational Safety and Health Administration (OSHA) and Centers for Disease Control and Prevention (CDC) guidelines must be complied with while rendering dental services pursuant to section 332.311, RSMo, and [4 CSR 110-2.131] **20 CSR 2110-2.131**.

*AUTHORITY:* section 332.311.2, RSMo Supp. [2001] 2007. This rule originally filed as 4 CSR 110-2.132. Original rule filed March 15, 2002, effective Aug. 30, 2002. Moved to 20 CSR 2110-2.132, effective Aug. 28, 2006. Amended: Filed Dec. 12, 2008.

*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 Dental Board, PO Box 1367, Jefferson City, MO 65102, by facsimile at (573) 751-8216, or via email at dental@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**Title 20—DEPARTMENT OF INSURANCE,  
FINANCIAL INSTITUTIONS AND PROFESSIONAL  
REGISTRATION  
Division 2110—Missouri Dental Board  
Chapter 2—General Rules**

**PROPOSED AMENDMENT**

**20 CSR 2110-2.240 Continuing Dental Education.** The board is proposing to amend section (4).

*PURPOSE:* Pursuant to Executive Order 06-04, the Division of Professional Registration was transferred from the Department of Economic Development, Title 4, to the Department of Insurance, Financial Institutions and Professional Registration, Title 20. Therefore, references to 4 CSR 110 are being amended throughout the rule.

(4) Licensees whose license has expired shall comply with the continuing education requirements as established in [4 CSR 110-2.071] **20 CSR 2110-2.071(8)**.

*AUTHORITY:* section[s] 332.031, RSMo 2000 and sections 332.181 and 332.261, RSMo Supp. [2004] 2007. This rule originally filed as 4 CSR 110-2.240. Original rule filed Aug. 30, 1993, effective April 9, 1994. For intervening history please consult the *Code of State Regulations*. Amended: Filed Dec. 12, 2008.

*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 Dental Board, PO Box 1367, Jefferson City, MO 65102, by facsimile at (573) 751-8216, or via email at dental@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**Title 20—DEPARTMENT OF INSURANCE,  
FINANCIAL INSTITUTIONS AND PROFESSIONAL  
REGISTRATION  
Division 2150—State Board of Registration for the  
Healing Arts  
Chapter 5—General Rules**

**PROPOSED AMENDMENT**

**20 CSR 2150-5.020 Nonpharmacy Dispensing.** The board is proposing to amend section (2).

*PURPOSE:* This amendment clarifies the level of supervision required for personnel employed to assist with the dispensing of drugs and devices and removes the current violation for a physician to allow dispensing of medication while he/she is not present.

(2) Physicians must provide appropriate[, *direct*] supervision to personnel employed to assist in the dispensing of drugs and devices from the physician's office. *It shall be a violation of this rule for any physician to permit the dispensing of medication from his/her clinic or office when that physician is not present unless another physician duly licensed under the provisions of Chapter 334, RSMo is present*].

*AUTHORITY:* section 334.125, RSMo [1986] 2000. This rule originally filed as 4 CSR 150-5.020. Original rule filed May 11, 1984, effective Sept. 14, 1984. Moved to 20 CSR 2150-5.020, effective Aug. 28, 2006. Amended: Filed Dec. 12, 2008.

*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 Board of Healing Arts, Tina Steinman, Executive Director, PO Box 4, Jefferson City, MO 65102, by faxing comments to (573) 751-3166, or by emailing comments to healingarts@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**T**his 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*.

**T**he 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 20—Personnel Advisory Board and Division  
of Personnel  
Chapter 3—Personnel Selection, Appointment,  
Evaluation and Separation**

**ORDER OF RULEMAKING**

By the authority vested in the Personnel Advisory Board under section 36.070, RSMo 2000, the board amends a rule as follows:

**1 CSR 20-3.070 Separation, Suspension and Demotion  
is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 2008 (33 MoReg 1703-1704). 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 20—Personnel Advisory Board and Division  
of Personnel  
Chapter 4—Appeals, Investigations, Hearings and  
Grievances**

**ORDER OF RULEMAKING**

By the authority vested in the Personnel Advisory Board under section 36.070, RSMo 2000, the board amends a rule as follows:

**1 CSR 20-4.010 Appeals is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 2008 (33 MoReg 1704-1706). 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 4—DEPARTMENT OF ECONOMIC  
DEVELOPMENT  
Division 85—Division of Business and Community  
Services  
Chapter 5—Historic Preservation Tax Credit Program**

**ORDER OF RULEMAKING**

By the authority vested in the Division of Business and Community Services under section 620.010, SB 788, Second Regular Session, Ninety-fourth General Assembly, 2008, the division adopts a rule as follows:

**4 CSR 85-5.010 Overview and Definitions is adopted.**

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on August 15, 2008 (33 MoReg 1555). 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: A public hearing on this proposed rule was held September 24, 2008, and the public comment period ended October 15, 2008. No one outside of the Department of Economic Development attended the public hearing. No written public comments on the proposed rule were received during the public comment period.

**Title 4—DEPARTMENT OF ECONOMIC  
DEVELOPMENT  
Division 85—Division of Business and Community  
Services  
Chapter 5—Historic Preservation Tax Credit Program**

**ORDER OF RULEMAKING**

By the authority vested in the Division of Business and Community Services under section 620.010, SB 788, Second Regular Session, Ninety-fourth General Assembly, 2008, the division adopts a rule as follows:

**4 CSR 85-5.020 is adopted.**

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on August 15, 2008 (33 MoReg 1556). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** A public hearing on this proposed rule was held September 24, 2008, and the public comment period ended October 15, 2008. No one outside of the Department of Economic Development (DED) attended the public hearing. Several written public comments were received during the public comment period.

**COMMENT #1:** Henry A. Bettendorf, of the law firm Thompson Coburn, LLP, requested that the Guidelines, incorporated by reference into this rule, be amended so that the restrictions on the participation of not-for-profit entities in the Historic Preservation Tax Credit Program (HTC) only apply to pass-through entities and not to taxable for-profit “C” corporations.

**RESPONSE AND EXPLANATION OF CHANGE:** Staff agrees and has amended the Guidelines accordingly.

**COMMENT #2:** Deb Sheals, Historic Preservation Consultant, pointed out that “NAICS Code” is listed in the Definitions section of the Guidelines, but the definition itself is not included.

**RESPONSE AND EXPLANATION OF CHANGE:** Staff agrees and has amended the Guidelines accordingly.

**COMMENT #3:** Michael Kressig, of the accounting firm Sabino & Company LLC, recommended that the Guidelines state specifically that the new rule and Guidelines revisions do not apply to projects receiving preliminary approval from DED prior to the effective date of the rule.

**RESPONSE AND EXPLANATION OF CHANGE:** Staff agrees and has added a paragraph to the Frequently Asked Questions section of the Guidelines.

**COMMENT #4:** Michael Kressig and Deb Sheals both pointed out that the definition of “Final Completion” in proposed rule 4 CSR 85-5.010 conflicts with how it is described in the Key Point “g.” on page 9 of the Guidelines.

**RESPONSE AND EXPLANATION OF CHANGE:** Staff agrees and has removed that Key Point from the Guidelines and added the definitions from proposed rule 4 CSR 85-5.010 to the Definitions section of the Guidelines.

**COMMENT #5:** Michael Kressig recommended that capitalized terms in the Guidelines not only be defined in proposed rule 4 CSR 85-5.010, but also be defined in the Guidelines.

**RESPONSE AND EXPLANATION OF CHANGE:** Staff agrees and has added the definitions from proposed rule 4 CSR 85-5.010 to the Definitions section of the Guidelines.

**COMMENT #6:** Bryan Keller recommended that a provision in the Guidelines for proposed rule 4 CSR 85-5.030 also be included in the Guidelines for proposed rule 4 CSR 85-5.020. That provision addresses submission of developer fee agreements at the beginning of the project.

**RESPONSE AND EXPLANATION OF CHANGE:** Staff agrees and has added that provision to the Preliminary Approval Checklist in the Guidelines.

**COMMENT #7:** Deb Sheals asked that an explanation of the Federal Employment Authorization Program, referred to in the Historic Preservation Tax Credit Program, Preliminary Approval Form 1, be added to the Guidelines.

**RESPONSE AND EXPLANATION OF CHANGE:** Staff agrees and has added an explanatory section on page 5 of the Guidelines, as well as adding a Key Point in the Guidelines.

#### **4 CSR 85-5.020 Preliminary Application**

(4) Applicants for state historic preservation tax credits must follow the procedures and guidelines found in *Missouri Historic*

*Preservation Tax Credit Program, Preliminary Application and Guidelines* and complete *Historic Preservation Tax Credit Program—Preliminary Approval Form 1*, both of which are incorporated by reference in this rule as published February 28, 2009, by DED and available at DED, Business and Community Services, 301 West High Street, Suite 770, Jefferson City, MO 65101. This rule does not incorporate any subsequent amendments or additions.

## **Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT**

### **Division 85—Division of Business and Community Services**

#### **Chapter 5—Historic Preservation Tax Credit Program**

#### **ORDER OF RULEMAKING**

By the authority vested in the Division of Business and Community Services under section 620.010, SB 788, Second Regular Session, Ninety-fourth General Assembly, 2008, the division adopts a rule as follows:

4 CSR 85-5.030 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on August 15, 2008 (33 MoReg 1556-1558). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** A public hearing on this proposed rule was held September 24, 2008, and the public comment period ended October 15, 2008. No one outside of the Department of Economic Development attended the public hearing. Several written public comments were received during the public comment period.

**COMMENT #1:** Bryan Keller, of the accounting firm Rubin Brown, LLP, and Michael Kressig, of the accounting firm Sabino & Co. LLC, pointed out that references to deadlines to submit the final application following project completion are inconsistent within the Guidelines.

**RESPONSE AND EXPLANATION OF CHANGE:** Staff agrees and has made changes within the Guidelines reflecting that the final application must be submitted within one hundred eighty (180) days of project completion.

**COMMENT #2:** Bryan Keller noted the inconsistency between the definition of final completion in proposed rule 4 CSR 85-5.010 and how it is defined in the Guidelines accompanying this rule.

**RESPONSE AND EXPLANATION OF CHANGE:** Staff agrees and has deleted those portions of the Guidelines that were inconsistent with proposed rule 4 CSR 85-5.010, and has added the definitions from that rule to the Guidelines.

**COMMENT #3:** Bryan Keller objected to the requirement in the Guidelines that substantive audit procedures be performed on one hundred percent (100%) of the rehabilitation expenses listed in the cost certification. He suggested that the scope of testing be left up to the certified public accountant (CPA).

**RESPONSE:** Staff disagrees with this position. No changes have been made to the rule as a result of this comment.

**COMMENT #4:** Michael Kressig suggested that the provision in the Guidelines that all accrued developer fees be paid within five (5) years of project completion would be a burden on developers of rental properties. He asked that it be extended to seven (7) or more years. Fred Zrenner, with the accounting firm of Prichard Osborne LLC, thought that five (5) years was too long.

**RESPONSE AND EXPLANATION OF CHANGE:** Staff has considered these comments and made changes in the Guidelines extending to six (6) years the period following project completion in which all accrued developer fees must be paid.

**COMMENT #5:** Fred Zrenner objected to the new provision in the Guidelines of additional auditing requirements when an identity of interest exists between the general contractor and subcontractors. He recommended that the additional auditing only be required if the interest was greater than ten percent (10%).

**RESPONSE:** Staff disagrees with this position. No changes have been made to the rule as a result of this comment.

**COMMENT #6:** Nigh Johnson objected to the new requirement for projects under two hundred fifty thousand dollars (\$250,000) that a CPA compile the invoices and proof of payment.

**RESPONSE:** Staff disagrees with this position. No changes have been made to the rule as a result of this comment.

**COMMENT #7:** Jack Hambene, with developer McCormack Baron Salazar, Inc., objected to the provision in the Guidelines that non-qualified rehabilitation expenses be excluded when determining the limit on the amount of developer fees considered for eligibility for credits.

**RESPONSE:** Staff disagrees with this position. No changes have been made to the rule as a result of this comment.

**COMMENT #8:** Jack Hambene objected to the provisions in the Guidelines limiting general contractor overhead, general requirements, and profit.

**RESPONSE:** Staff disagrees with this position. No changes have been made to the rule as a result of this comment.

#### 4 CSR 85-5.030 Final Application

(3) Applicants for state historic preservation tax credits must follow the procedures and guidelines found in *Missouri Historic Preservation Tax Credit Program, Final Application and Guidelines* and complete *Historic Preservation Tax Credit Program—Final Approval Form—Form 2*, both of which are incorporated by reference in this rule as published February 28, 2009, by DED and available at DED, Business and Community Services, 301 West High Street, Suite 770, Jefferson City, MO 65101. This rule does not incorporate any subsequent amendments or additions.

### Title 7—DEPARTMENT OF TRANSPORTATION Division 10—Missouri Highways and Transportation Commission Chapter 25—Motor Carrier Operations

#### ORDER OF RULEMAKING

By the authority vested in the Missouri Highways and Transportation Commission under section 226.020, RSMo 2000 and section 304.200, RSMo Supp. 2007, the commission amends a rule as follows:

7 CSR 10-25.020 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on August 15, 2008 (33 MoReg 1559-1572). 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 Missouri Highways and Transportation Commission (MHTC) received four (4) comments on the proposed amendment.

**COMMENT #1:** Section (15) Super Heavy and Large Load Movement. Paragraph 4. outlines when Missouri State Highway Patrol escorts are required. For very short moves, it is not always practical to require Missouri State Highway Patrol escorts. It is suggested, at the discretion of Motor Carrier Services, carriers use local law enforcement escorts in lieu of the Highway Patrol for moves that are limited in length.

**RESPONSE AND EXPLANATION OF CHANGE:** The commission agrees with this comment, and section (15) is amended.

**COMMENT #2:** Paragraph (15)(F)3. states that superloads may be moved on the weekends for loads fourteen feet (14') wide and less. If a permit is required to travel over a bridge structure at crawl speed, movement should be restricted on the weekend at Motor Carrier Services' discretion.

**RESPONSE AND EXPLANATION OF CHANGE:** The commission agrees with this comment, and paragraph (15)(F)3. is amended.

**COMMENT #3:** Section (4) Permit Applications, Permit Transmissions, and Permit Fees. Paragraph (4)(E)5. charges a bridge and roadway analysis fee for each permit. Identical permits with identical vehicle configurations should only be charged a bridge and roadway analysis fee if the original bridge study is more than thirty (30) days old for loads in excess of three hundred thousand (300,000) pounds and if the original bridge study is more than sixty (60) days old for loads weighing less than three hundred thousand (300,000) pounds. The sentence beginning with "An additional \$425 bridge safety fee will be charged. . . ." should state ". . . bridge study fee. . . ."

**RESPONSE AND EXPLANATION OF CHANGE:** The commission agrees with this comment, and paragraph (4)(E)5. is amended.

**COMMENT #4:** Paragraph (4)(E)15. should state that the permittee name should not be amended. However, if the permit effective date is in the future, any component of the permit may be amended.

**RESPONSE AND EXPLANATION OF CHANGE:** The commission agrees with this comment, and paragraph (4)(E)15. is amended.

#### 7 CSR 10-25.020 Oversize and Overweight Permits

(4) Permit Applications, Permit Transmissions, and Permit Fees.

(E) Special permit fees are payable prior to the issuance of the permit. If the permit becomes invalid for any reason, the original fee shall be nonrefundable and a new permit with fee will be necessary. Applicants are responsible for payment of permit fees for expired permits that are issued and left in approved status. Postal and telegraphic money orders, personal, company, certified, and cashier's checks, credit cards, and electronic funds shall be made payable to the "Director of Revenue." Cash is also accepted. The special permit fees are as follows:

1. Single trip oversize permits including pre-issue—\$15;
2. Single trip oversize permits in excess of sixteen feet (16') wide, sixteen feet (16') high, or one hundred fifty feet (150') long—\$15 plus \$250 movement feasibility fee;
3. Multi-stop oversize permit—\$25 (farm implements only);
4. Single trip overweight permits up to and including one hundred sixty thousand (160,000) pounds gross weight—\$15 plus \$20 per each ten thousand (10,000) pounds in excess of legal gross weight;
5. Single trip overweight permits in excess of one hundred sixty thousand (160,000) pounds gross weight—\$15 plus \$20 per each ten thousand (10,000) pounds in excess of legal gross weight plus bridge and roadway analysis fee of \$425 for each permit for moves from 0–50 miles in length; \$625 for 51–200 miles; \$925 for over 200 miles (see section (15)). Identical permit applications with identical vehicle configurations will only be charged one bridge and roadway

analysis fee if the original bridge study is less than thirty (30) days old for loads in excess of three hundred thousand (300,000) pounds and if the original bridge study is less than sixty (60) days old for loads weighing less than three hundred thousand (300,000) pounds. An additional four hundred twenty-five dollar (\$425) bridge study fee will be charged if the applicant modifies dimensions or weights on an application and a new bridge analysis is required after the original analysis has been completed;

6. Annual blanket emergency overweight permit (round trip)—\$624 (fee will be prorated quarterly);

7. Annual blanket oversize permit—single commodity—\$128 (fee will be prorated quarterly);

8. Annual blanket oversize permit—multiple commodity—\$400 (fee will be prorated quarterly);

9. Annual blanket overweight well drillers or concrete pump truck permit—\$300 (fee will be prorated quarterly);

10. Thirty (30)-day blanket permit—\$300;

11. Project permit—\$125;

12. Highway crossing permit—\$250;

13. Noncommercial building movement (in excess of routine dimensions)—\$265;

14. Single Trip Commercial Zone Bridge Analysis—\$265; and

15. Permit amendment fee—\$2. Single trip permits may only be amended within two (2) business days of permit start date. The start date and any other component will be amended if permit effective date is in the future. The permittee, origin, destination, and/or commodity being hauled/towed will not be amended if the permit is already in effect. Annual blanket permits may be amended one time throughout the year for truck make and/or license.

(15) Super Heavy and Large Load Movement. Loads in excess of routine permit limits will be considered according to the following regulations when air, rail, or water terminal points are not available:

(F) Restrictions and Requirements.

1. Travel on interstate and other divided highways allowed from one-half (1/2) hour before sunrise to one-half (1/2) hour after sunset except where restricted in tourist and urban areas (see subsections (9)(D) and (9)(E)) and as prohibited by holiday restrictions in subsection (1)(I).

2. No movement from 6:30 a.m. to 9:00 a.m. and 3:30 p.m. to 6:00 p.m. on all other routes on the state highway system.

3. Travel is allowed on Saturday and Sunday for moves fourteen feet (14') wide and less except movement may be restricted for loads that are required to travel over a bridge structure at crawl speed, and no movement is allowed on Saturday and Sunday in tourist areas (see subsection (9)(D)).

4. Unless otherwise stated on the permit, dates and times of travel will be determined by the Missouri State Highway Patrol if the load requires their escort services.

(G) Escort Requirements. If Missouri State Highway Patrol escorts are required for a continuous portion of the move but not the entire move, they are only required for that portion. If the patrol escort is required for an intermittent portion of the move, they will be required to escort the entire move. In addition to escort requirements as outlined in subsection (9)(I), the following requirements apply to super heavy and large load movements:

1. One (1) front and one (1) rear civilian escort is required for all superloads, except;

2. If a load is required to cross bridge structures at crawl speed in the Kansas City and St. Louis areas, then one (1) front and two (2) rear civilian escorts are required for that portion of the move;

3. One (1) front and two (2) rear civilian escorts are required on all sections of dual lane highways traversed if load exceeds sixteen feet (16') wide and Missouri State Highway Patrol escorts are not present. If Missouri State Highway Patrol escorts are present, one (1) front and one (1) rear civilian escort is required. In addition to the civilian escorts required above;

4. Missouri State Highway Patrol escorts are required when load exceeds:

A. Sixteen feet (16') wide on any highway other than interstate or MO 370;

B. Eighteen feet (18') wide on interstate or MO 370;

C. One hundred fifty feet (150') overall length on any highway;

D. Seventeen feet (17') high on any highway;

E. Any time deemed necessary due to complexity of route or load.

The Missouri State Highway Patrol will conduct a Level I inspection prior to performing escort services. Motor Carrier Services may, at their discretion, allow the substitution of local law enforcement in the place of Missouri State Highway Patrol escorts for moves that are limited in length.

**Title 8—DEPARTMENT OF LABOR AND  
INDUSTRIAL RELATIONS  
Division 50—Division of Workers' Compensation  
Chapter 3—Self-Insurance**

**ORDER OF RULEMAKING**

By the authority vested in the Division of Workers' Compensation under sections 287.280 and 287.650, RSMo 2000, the division amends a rule as follows:

8 CSR 50-3.010 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 2008 (33 MoReg 1713-1721). 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 received comments in support of the proposed amendment to the rule submitted by the Missouri Merchants & Manufacturing Association (MMMA), Missouri Self-Insurers Association (MSIA), Missouri Automobile Dealers Association (MADA), and Tiller Consulting Group, Inc. stating that the changes "further insure solvency of self-insured trusts," improve the efficiency of interactions between the trusts and the division, and the letters of credit provide flexibility to the employers. The Missouri Private Sector Individual Self-Insurers Guaranty Corporation (hereafter "MPSISIGC") submitted specific comments that have been summarized below.

**COMMENT #1:** The MPSISIGC states that additional language needs to be inserted immediately before the last sentence of the first paragraph in subparagraph (3)(B)1.C. to provide for the transfer of the security proceeds from the irrevocable letter of credit to the MPSISIGC in the event the individual self-insured member employer becomes insolvent. The MPSISIGC states that the insertion of the additional language would make this security option for transfer of proceeds in the case of an employer's insolvency consistent with the language as it exists for the surety bond and the escrow agreement posted by the self-insured employer.

**RESPONSE AND EXPLANATION OF CHANGE:** Upon reviewing the rule language relating to this comment, the division agrees and amends the language in subparagraph (3)(B)1.C. to state that in the case of insolvency the proceeds of the irrevocable letter of credit shall be transferred to the Missouri Private Sector Individual Self-Insurers Guaranty Corporation, if applicable, in anticipation of payment of compensation obligations which the employer has not paid.

**COMMENT #2:** The MPSISIGC states that there is no provision contained in the proposed language relating to letters of credit either in the form called "Irrevocable Letter of Credit" (WC-249) or in subparagraph (3)(B)1.C. that deals with the consequences of expiration



of the letter of credit after the five (5)-year time period. The MPSISIGC proposes that additional language needs to be inserted that in the event of a default the division would be able to call the irrevocable letter of credit if the employer either fails to extend or renew the expiring letter of credit or fails to post adequate alternative security at least thirty (30) days prior to the final expiration date of the letter of credit. The MPSISIGC believes that the additional language should be inserted in form WC-249 and subparagraph (3)(B)1.C.

**RESPONSE AND EXPLANATION OF CHANGE:** Upon reviewing the rule language relating to this comment, the division agrees and amends the language in subparagraph (3)(B)1.C. to state that the division will call upon the letter of credit in the event of a default in the payment of compensation obligations or if alternative security in the form of a surety bond, an irrevocable letter of credit, or escrow deposit is not posted with the division at least thirty (30) days before the final expiration of the letter of credit. The division has inserted additional language in form WC-249 to reflect a default if alternative security is not posted with the division at least thirty (30) days prior to the final expiration of the letter of credit.

**COMMENT #3:** The MPSISIGC requests confirmation that the omission of subsections (3)(C) through (J) in the proposed amendment to the existing rule is due to the fact that no changes were made to these provisions and that the division is not proposing to delete these sections. The MPSISIGC proposes no change to the existing language in subsections (3)(C) through (J).

**RESPONSE:** The division is not proposing to delete subsections (3)(C) through (J). These subsections are omitted as no changes were made to the text of these subsections.

**COMMENT #4:** The MPSISIGC requests confirmation that there is no proposed change to the form "Guaranty to Satisfy Compensation Claims Under Workers' Compensation Law of Missouri," WC-82A, referenced in subsection (d) of section (3)(B). The MPSISIGC proposes no change to said form.

**RESPONSE:** The division has made no changes to the form "Guaranty to Satisfy Compensation Claims Under Workers' Compensation Law of Missouri," WC-82A, that is referenced in paragraph (3)(B)2. and not subsection (d) of section (3)(B).

### 8 CSR 50-3.010 Rules Governing Self-Insurance

#### (3) Individual Self-Insurance—Additional Requirements.

(B) The division shall make a preliminary determination based on the factors set out in paragraph (3)(I)1. to approve or deny the application and shall notify the applicant. Upon preliminary approval of the application, the employer shall comply with the following:

1. Provide security in the minimum amount of two hundred thousand dollars (\$200,000) and the division may, if it deems advisable in any particular case, require a larger amount. Security will be furnished in one (1) of three (3) ways: by filing with the Division of Workers' Compensation an approved surety bond; by an irrevocable letter of credit; or by depositing in escrow approved securities as defined in this section. In exceptional instances the division may require additional security deposits equal to actuarially determined incurred losses.

A. If a surety bond is given, the surety shall be by a company admitted by the Missouri Department of Insurance, Financial Institutions and Professional Registration to transact such business in this state and shall be AM Best rated A- or better or shall have reserves acceptable to the department for a new and unrated company. The bond shall be on a form prescribed by the Division of Workers' Compensation included herein (Bond of Employer Carrying His Own Risk, WC-82 Bond). Any such bond shall be perpetual and shall not be released by the division unless additional replacement security approved by the division is provided. In the case of insol-

veny, the proceeds of the surety bond shall be transferred to Missouri Private Sector Individual Self-Insurers Guaranty Corporation, if applicable, in anticipation of payment for compensation obligations which the employer has not paid; but no funds shall be used to make payments of compensation until the division has given the employer and surety company thirty (30) days' written notice.

B. If the securities are deposited in escrow, they shall be in the form of United States Government Obligations, which are limited to treasury bills, notes, or bonds. Securities deposited in escrow or trust shall be deposited only in a bank or trust company in the state of Missouri. When securities are deposited as provided above, the employer shall file with the division an agreement on a form approved by the division included herein (Escrow Agreement, Form 82 Escrow), providing that upon failure or neglect of the employer to make payment of compensation all, or any part of such securities, as the occasion may require, may be sold. The proceeds of this sale shall be transferred to Missouri Private Sector Individual Self-Insurers Guaranty Corporation, if applicable, in anticipation of payment for compensation obligations which the employer has not paid; but no securities shall be sold or funds shall be used to make payments of compensation until the division has given the employer and bank or trust company thirty (30) days' written notice.

C. An irrevocable letter of credit (hereafter letter of credit) must meet those requirements found in section 400.5-101, RSMo *et seq.*, as well as those additional requirements found below. The letter of credit, along with an authorization for release of confidential information, must be submitted to the division on division-approved forms included herein (Irrevocable Letter of Credit, WC-249; Authorization For Release of Confidential Information, WC-249-3). In the case of insolvency, the proceeds of the irrevocable letter of credit shall be transferred to the Missouri Private Sector Individual Self-Insurers Guaranty Corporation, if applicable, in anticipation of payment of compensation obligations which the employer has not paid. The letter of credit must include the following provisions:

(I) A letter of credit, issued by a commercial bank chartered under the laws of Missouri or chartered pursuant to the National Banking Act, may be submitted to the Missouri Department of Labor and Industrial Relations, Division of Workers' Compensation (hereinafter the division). The letter of credit must be in an amount equal to the otherwise required bond or securities;

(II) The letter of credit shall be irrevocable, and the beneficiary shall be the division. Payment shall be made immediately upon presentation of a demand for payment signed by the director of the division or his/her designated representative;

(III) All letters of credit shall conform to a required format. A standard letter of credit form embodying this format shall be provided by the division and is included herein (Irrevocable Letter of Credit, WC-249). All letters of credit shall be accompanied by an authorization for release of confidential information allowing the director of the division or his/her designee to release confidential information to the issuing bank;

(IV) A demand for payment upon a letter of credit may be presented for payment only upon reasons that bond proceeds would be demanded;

(V) All letters of credit must be negotiable at a financial institution located within Missouri;

(VI) Letters of credit shall have a term of one (1) year and shall be automatically renewable on an annual basis for an additional five (5) years. A letter of credit may be canceled by the issuer sixty (60) days after written notice is delivered to the division. Upon this notice the applicant shall be required to substitute a surety bond within sixty (60) days. If the required bond is not received within that time period, the self insurance privilege shall immediately terminate without notice;

(VII) The division shall not release the letter of credit until it is satisfied, either by audit or otherwise, that no claims exist against the letter;

(VIII) An applicant shall be required to augment letters of credit in any situation where the applicant would be required to increase its coverage under a surety bond. This additional bonding requirement may be satisfied by increasing the letter of credit, submitting an additional letter of credit, submitting an additional surety bond, or depositing additional securities. Failure to increase the letter of credit amount when required will result in the immediate termination of the self insurance privilege without notice; and

(IX) The division will call upon the letter of credit in the event of a default in the payment of compensation obligations or if alternative security in the form of a surety bond, an irrevocable letter of credit, or escrow deposit is not posted with the division at least thirty (30) days before the expiration of the letter of credit.

D. After an employer has secured his/her liability by any one (1) of the methods provided by these rules and desires to substitute one (1) form of security for the other, substitution may be done with prior approval of the division thirty (30) days before the effective date;

2. All subsidiary corporations or other subsidiary legal entities shall have the parent corporation or other legal entity guarantee its liability for payment of benefits under Chapter 287, RSMo, and shall file such guarantee with the division along with a resolution of the parent entity authorizing such guarantee. The parent corporation or other legal entity must be in business for at least four (4) years. The form and substance of such guarantees shall be approved by the division as included herein (Guaranty To Satisfy Compensation Claims Under Workers' Compensation Law of Missouri, WC-82A);

3. Provide confirmation of specific excess insurance or aggregate excess insurance, or both types of insurance, issued by an insurance carrier admitted by the Department of Insurance, Financial Institutions and Professional Registration to do business in this state with specified policy limits and retention amounts approved by the division. The insurance carrier shall be AM Best rated A- or better or shall have reserves acceptable to the department for a new and unrated company. The terms and conditions of the insurance contract shall be applicable only to Missouri. This coverage cannot be canceled or nonrenewed unless written notice by certified mail is given to the other party to the policy and to the division not less than sixty (60) days before termination by the party desiring to cancel or not renew the policy; and

4. In accordance with section 287.860, RSMo, each applicant seeking to become a self-insurer, other than self-insured trusts, or individual public sector self-insurers, as defined in section 287.280 or 537.620, RSMo, shall become and remain members of the Missouri Private Sector Individuals Self-Insurers Guaranty Corporation.



MISSOURI DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS  
DIVISION OF WORKERS' COMPENSATION  
**IRREVOCABLE LETTER OF CREDIT**

TO: Missouri Department of Labor and Industrial Relations (Beneficiary)  
Division of Workers' Compensation  
P.O. Box 58  
Jefferson City, MO 65102-0058

Amount U.S. \$ \_\_\_\_\_ Letter of Credit Line

Date of Issuance \_\_\_\_\_

At the Request of \_\_\_\_\_

Doing business as \_\_\_\_\_

of \_\_\_\_\_ State of \_\_\_\_\_

We hereby issue our irrevocable letter of credit in favor of the Missouri Department of Labor and Industrial Relations, Division of Workers' Compensation, in the sum of \_\_\_\_\_ dollars (\$ \_\_\_\_\_ ) available by your demand for payment.

Demand under this irrevocable letter of credit must be accompanied by a written order of the Division of Workers' Compensation that there has been a default in that alternative security has not been posted with the division at least thirty (30) days prior to the final expiration of the letter of credit or that the payment of a final Workers' Compensation award to any and all persons who may be entitled to such sum for medical, surgical and other services, funeral expenses or compensation for thirty days or that the principal has become insolvent, and marked "Drawn against irrevocable letter of credit number \_\_\_\_\_."

This obligation shall be deemed automatically renewed on an annual basis for a period of not less than five (5) years from the date of this letter. This credit will expire in full and finally five (5) years from the date of issuance. The issuing banking institution may cancel the letter of credit and be released of future liability hereunder by delivering sixty (60) days' prior written notice to the Missouri Department of Labor and Industrial Relations, Division of Workers' Compensation, at the address shown above. Cancellation shall not affect any liability incurred and accrued hereunder prior to the termination of the sixty (60)-day period.

Upon receipt of notification, you may make your one (1) demand for payment for the unused balance of this irrevocable letter of credit, mentioning thereon our letter of credit number \_\_\_\_\_ accompanied by your signed statement that the agreement is still outstanding and that the proceeds of the payment will be retained and used in lieu of the letter of credit with any unused portion to be returned to the accountee.

We hereby engage with you that demands made in conformity with the terms of this credit will be duly honored on presentation.

In witness whereof, we have duly executed the foregoing this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.

\_\_\_\_\_  
Issuing Bank Institution

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
Bank routing transit number

By \_\_\_\_\_  
Signature and Title of Bank Official

Before me personally appeared \_\_\_\_\_ who acknowledges that s/he signed the foregoing as his/her free act and deed.

I have hereunto set my hand and affixed my official seal at my office in this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_.

My term expires \_\_\_\_\_

\_\_\_\_\_  
Notary Public

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

**ORDER OF RULEMAKING**

By the authority vested in the Clean Water Commission under section 644.026, RSMo 2000, the commission amends a rule as follows:

10 CSR 20-6.010 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on June 16, 2008 (33 MoReg 1134). The section with the change is reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** A public hearing on this proposed amendment was held September 10, 2008. The public comment period ended September 17, 2008. The Water Pollution Control Branch staff indicated that two (2) comments were made on the proposed amendment at the public hearing and one (1) comment letter was received via email.

**COMMENT #1:** Mr. Robert Brundage, of the firm Newman, Comley and Ruth, Jefferson City, Missouri, commented that while the Missouri Department of Natural Resources does not require National Pollutant Discharge Elimination System (NPDES) permitting of pesticides, they are regulated under Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Mr. Brundage further commented that the exemption is provided for pesticides applied in accordance with the label under federal law.

**RESPONSE:** No change was made as a result of this comment.

**COMMENT #2:** Mr. David Bentlage, of Golden City, Missouri, commented that as a farmer he is required to have a permit and to keep records when applying herbicides and pesticides. He asked the reason for the exemption.

**RESPONSE:** Chairperson Perry responded that pesticides are already covered under FIFRA. No change was made as a result of this comment.

**COMMENT #3:** Mr. Richard H. Rocha indicated a concern that the word “pests” as used in the proposed text may be misinterpreted. To avoid the assumption that “pests” refer only to insects, the suggestion was made that the following statement be added in parentheses, “e.g. any insect, rodent, nematode, fungus, weed, etc.,” to explain the word pest.

**RESPONSE AND EXPLANATION OF CHANGE:** The staff agrees that there could be a misinterpretation of the word “pests” as used in the proposed text and has revised paragraph (1)(B)9. as suggested.

**10 CSR 20-6.010 Construction and Operating Permits**

(1) Permits—General.

(B) The following are exempt from permit regulations:

1. Nonpoint source discharges;
2. Service connections to wastewater sewer systems;
3. Internal plumbing and piping or other water diversion or retention structures within a manufacturing or industrial plant or mine, which are an integral part of the industrial or manufacturing process or building or mining operation. An operating permit or general permit shall be required, if the piping, plumbing, or structures result in a discharge to waters of the state;
4. Routine maintenance or repairs of any existing sewer system, wastewater treatment facility, or other water contaminant or point source;
5. Single family residences;

6. The discharge of water from an environmental emergency cleanup site under the direction of, or the direct control of, the Missouri Department of Natural Resources or the Environmental Protection Agency (EPA), provided the discharge shall not violate any condition of 10 CSR 20-7.031 Water Quality Standards;

7. Water used in constructing and maintaining a drinking water well and distribution system for public and private use, geologic test holes, exploration drill holes, ground water monitoring wells, and heat pump wells;

8. Small scale pilot projects or demonstration projects for beneficial use, that do not exceed a period of one (1) year may be exempted by written project approval from the permitting authority. The department may extend the permit exemption for up to one (1) additional year. A permit application shall be submitted at least ninety (90) days prior to the end of the demonstration period if the facility intends to continue operation, unless otherwise exempted under this rule or Chapter 6; and

9. The application of pesticides in order to control pests (e.g., any insect, rodent, nematode, fungus, weed, etc.) in a manner that is consistent with the requirements of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Missouri Pesticide Use Act.

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

**ORDER OF RULEMAKING**

By the authority vested in the Clean Water Commission under section 644.026, RSMo 2000, the commission amends a rule as follows:

10 CSR 20-6.300 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on June 16, 2008 (33 MoReg 1134-1152). 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:** A public hearing on this proposed amendment was held September 10, 2008. The public comment period ended September 17, 2008. The Water Pollution Control Branch staff indicated that three (3) comments were made on the proposed amendment at the public hearing, sixteen (16) comments pertaining to the rule were received via email, and two (2) internal comments for a total of twenty-one (21) comments.

**COMMENT #1:** Several comments were received that provided support for the department on this rulemaking. Many commenters believed that the federal rules should be adopted by the state.

**RESPONSE:** No change was made as a result of these comments.

**COMMENT #2:** Work into the definition of process wastewater an exemption for any storm water that comes into contact with hay bales stored outside. Also, provide a mechanism within rule so that minor amounts of spilled feed outside barns do not constitute a discharge of process wastewater.

**RESPONSE:** No changes were made as a result of this comment; however, clarification on this comment is provided. The primary issue that this comment addresses is whether storm water that comingles with nutrients absorbed by stored baled hay, or minor amounts of spilled grain or feed constitute a discharge. Discharge is defined in 10 CSR 20-2.010 as the causing or permitting of one (1) or more water contaminants to enter waters of the state. A strict application of this definition could result in the determination that water contaminants resulting from storm water runoff that have contacted baled

hay or minor amounts of spilled grain or feed from a Concentrated Animal Feeding Operation (CAFO) is a discharge of a water contaminant to waters of the state. The department believes that this scenario is an extremely narrow interpretation of the regulations. It would be very difficult, if not impossible, to document water quality violations that resulted solely from the storage of baled hay or minor amounts of spilled grain. The department is unaware of any methods to distinguish between storm water runoff from an agricultural production field in which the baled hay resides versus the storm water runoff of the baled hay itself. The department believes that when simple best management practices are followed, it is highly unlikely that this storm water containing minor amounts of contaminants will enter waters of the state. A simple Best Management Practice (BMP) for CAFOs to follow to ensure that this is prevented is to create an appropriate amount of managed vegetative area surrounding the production site to provide the necessary filtration to eliminate the possibility of a discharge. The department must use its limited resources in a responsible and effective manner when investigating water quality concerns, and we will use sound, common-sense judgment when evaluating these types of circumstances.

**COMMENT #3:** On page 1142, subsection (4)(C), we are incorporating portions of 40 CFR 412, the Effluent Limitation Guidelines. For the sake of clarity, it would make sense to list them so the public does not need to determine which parts of 40 CFR 412 are effluent limitations and which ones are not.

**RESPONSE:** No change was made as a result of this comment. The department believes that the proposed amendment is very clear as to which portions of 40 CFR 412, the Effluent Limitation Guidelines (ELGs), are applicable. The provisions within Environmental Protection Agency (EPA) rule that are applicable to the proposed amendment are lengthy and complex and reprinting them word for word in state rule is not necessary.

**COMMENT #4:** On page 1141, paragraph (3)(G)1., the rule discusses when nutrient management plans (NMPs) need to be completed and implemented by a CAFO. The draft EPA revised rule which provides additional requirements for NMPs has not yet been finalized. There may be a need to adjust the date depending on what EPA does.

**RESPONSE AND EXPLANATION OF CHANGE:** The department has made changes to this paragraph as a result of this comment. The department has been made aware that CAFOs would already need to comply with this yet to be final rule in order to meet the February 2009 compliance date. Since this proposed amendment is not yet final, it would be inappropriate for the department to expect compliance from CAFOs at this time. To fix this problem, the department believes that it would be more appropriate to use the construction permit application submittal date as the required date of adherence to the NMP requirement. NMPs would not be required to be developed and implemented until operating permit coverage was requested. Therefore, any construction permit application received by the department after February 26, 2009, will be subject to the NMP requirements of this rule.

**COMMENT #5:** Rigid ground water quality testing in the runoff areas should be mandatory with significant fines and action plans for a remedy. Private well contamination should be monitored, and when contamination is found that is linked to nutrient management, mandatory remedies should be imposed.

**RESPONSE:** No change has been made as a result of this comment. This comment is beyond the scope of this rulemaking effort. The scope of this proposed rulemaking was limited strictly to incorporating, without change, federally mandated rule changes promulgated by the U.S. Environmental Protection Agency (EPA) in 2003.

**COMMENT #6:** Buffer distances are entirely inadequate as they are currently stated. (33 MoReg 1139)

**RESPONSE:** No change has been made as a result of this comment. This comment is beyond the scope of this rulemaking effort. The scope of this proposed rulemaking was limited strictly to incorporating, without change, federally mandated rule changes promulgated by the U.S. Environmental Protection Agency (EPA) in 2003. This comment relates to statutory requirements that the department is unable to change.

**COMMENT #7:** Air quality monitoring must be more rigid and remedies imposed.

**RESPONSE:** No change has been made as a result of this comment. This comment is beyond the scope of this rulemaking effort. The scope of this proposed rulemaking was limited strictly to incorporating, without change, federally mandated rule changes promulgated by the U.S. Environmental Protection Agency (EPA) in 2003. The Missouri Clean Water Commission, which Missouri law has empowered to both implement and enforce the Clean Water Law, has expressly stated through regulation that the department lacks jurisdiction to address questions or concerns related to "non-water quality related items," like zoning, location, and property values (10 CSR 20-6.020(H)). Accordingly, topics related to odor and air quality are beyond the scope of this rulemaking and cannot be addressed through this rulemaking effort.

**COMMENT #8:** State enforcement of the most rigid possible interpretations of the EPA's codes for CAFOs is essential. Rigid monitoring of the environment affected by each individual CAFO is essential.

**RESPONSE:** No change has been made as a result of this comment. The federal regulation adopted within the proposed rulemaking will be enforced. Although the specific type of rigid monitoring in this comment was not described, the regulation requires monitoring and inspection of wastewater systems and structures to ensure their proper operation. The department conducts both unscheduled inspections along with site investigations at CAFOs in response to complaints.

**COMMENT #9:** I was not able to find land application defined in the rules. Does land application imply aerial spraying? Spraying wastewater saturated with ammonia and other animal feeding wastes ten feet to seventy-five feet (10'-75') in the air creates a public nuisance and is likely to migrate off the property in the air. It is not land application. The rules need to be changed to define land application as applying to soils, not the atmosphere.

**RESPONSE:** No change has been made as a result of this comment. The term "land application" is not defined in this proposed amendment and was not defined in federal rule. The scope of this proposed rulemaking was limited strictly to incorporating, without change, federally mandated rule changes promulgated by the U.S. Environmental Protection Agency (EPA) in 2003. The proposed amendment includes several requirements like setbacks and application rate restrictions that will ensure wastes are appropriately applied on soil surfaces where they can be agronomically utilized.

**COMMENT #10:** On page 1137, paragraph (1)(B)13., Land Application Area is defined as, "Agricultural land which is under the control of the CAFO owner or operator, whether it is owned, rented, or leased, to which manure, litter, or process waste water from the production area is or may be applied." In order to ensure that an agreement to land apply on a neighboring landowner does not constitute "owned, rented, or leased," I would like to have another sentence added to the definition that states, "Land Application Area does not include land owned by another party in which manure is sold or given away to." The general permit states, "The permittee is responsible for all land application sites that are owned, leased, or otherwise controlled by the permittee including land used under agreements with other landowners." This provision needs to be changed in the rule and in the general permit. A producer should not

be held responsible for actions of someone else, just because manure was spread on another farmer's field.

RESPONSE: No changes were made as a result of this comment; however, clarification on this is provided. The permit conditions and restrictions (i.e., setbacks, rate restrictions, etc.) will apply to any farm field when the CAFO owner or operator is in physical control of the manure. This means if the CAFO owner/operator has sold manure to his neighbor, and he is using his equipment to land apply manure on the neighbor's land, the permit conditions will apply. The point when the permit no longer applies is when the manure is no longer under the physical control of the CAFO owner/operator.

COMMENT #11: On page 1137, paragraph (1)(B)22., Process wastes is defined as, "Process waste includes manure, wastewater and any precipitation which comes in contact with any manure, litter or bedding or any other raw materials . . . It includes . . . storm water runoff from deposits of airborne dust from building ventilation systems or spillage of feed or manure." First, I cannot tell if this is an old definition or a new one. Secondly, if dust comes out of a tunnel fan, settles on the grass, and then has the potential to be washed into waters of the state by precipitation, then a farm would have to have a permit, no matter the size, because it has the "potential to discharge" under the Federal CAFO rule. I am curious as to MDNR's stance on farms that are permitted; if the rule sticks, then will MDNR cite a producer for having a discharge in this scenario? Same point with litter clean out—if a small amount of litter is left on the ground during clean out and it rains on it, is this considered process waste?

RESPONSE: No changes were made as a result of this comment; however, clarification on this comment is provided. The text in the proposed amendment that is italicized and in brackets is being deleted from the rule. The rule definition about storm water runoff from airborne dust is actually part of the old definition and is proposed to be deleted in this rulemaking. To provide clarification on the whether settled dust from a confinement barn that comingles with storm water could constitute a discharge, it is important to recognize the state definition of a discharge. Discharge is defined in 10 CSR 20-2.010 as the causing or permitting of one (1) or more water contaminants to enter waters of the state. The department recognizes that each situation regarding clean out and the temporary storage of litter has its own set of specific circumstances that make a broad interpretation of when a discharge occurs very difficult. However, it is highly unlikely that ventilation dust or minor amounts of spilled feed or manure will enter waters of that state, if an operation follows simple best management practices. (See response to comment #2 above.) An appropriate amount of managed vegetative area surrounding the production site will provide the necessary filtration to eliminate the possibility of a discharge. The department has, and will continue to use, good common sense judgment when evaluating these types of circumstances.

COMMENT #12: On page 1137, paragraph (1)(B)26., Wet handling system is defined as, "Wet handling system is the handling of manure that contains less than fifty percent (50%) dry matter or has free draining liquids." Hen litter can have forty percent (40%) dry matter, so does that mean that hen farms are subject to wet handling system permitting requirements?

RESPONSE: No changes were made as a result of this comment. This comment is beyond the scope of this rulemaking effort. The scope of this proposed rulemaking was limited strictly to incorporating, without change, federally mandated rule changes promulgated by the U.S. Environmental Protection Agency (EPA) in 2003. This is an existing definition that was not impacted by the federal rule change and will not change in this rulemaking.

COMMENT #13: On page 1141, paragraph (3)(E)2. requires record keeping for land application areas. For instance, it requires records of expected crop yields and calculations of the total nitrogen and

phosphorus to be applied to each field including sources other than manure. Several producers sell their litter and have no control over the farmer's actions including spreading commercial fertilizer, nor could be reasonably held accountable to track actions taken by a farmer on his/her own land. Therefore, I suggest that in paragraph (3)(E)2., the sentence read, "Permits shall require the permittee maintain the following records for the land application areas owned or leased by the permittee . . ." This would be taken care of if the definition of Land Application Area is changed as indicated above. There were other comments related to the transferring of manure to third parties along with the retention of records for five (5) years and whether CAFOs should keep their records for a longer period of time.

RESPONSE: No changes were made as a result of this comment. The scope of this proposed rulemaking was limited strictly to incorporating, without change, federally mandated rule changes promulgated by the U.S. Environmental Protection Agency (EPA) in 2003. Paragraph (3)(E)2. as referenced above states that records be maintained for the land application area. Land application area has a specific definition as explained in comment #10 above. Land application records are not required when manure is sold or transferred to another person, unless it is still under the physical control of the CAFO owner. There are specific record keeping requirements in subparagraph (3)(E)1.G. on page 1141 for manure that is transferred or sold. Furthermore, page 1140 paragraph (3)(A)4. requires a current nutrient analysis of the manure be given to the person to whom the manure is being transferred.

COMMENT #14: On page 1141, subparagraph (3)(F)1.B. requires the reporting of "the estimated amount of total manure, litter, and process wastewater generated by the operation in the previous twelve (12) months." If the reporting year ends up being on a calendar year basis, how can a producer tell how many tons of manure a chicken excretes the first of a calendar year if the house is not completely cleaned out? This needs to be changed to reporting the number of tons land applied.

RESPONSE: No changes were made as a result of this comment. This reporting requirement is already on the annual report form the department is currently using. We agree there is no practical way for a CAFO to quantify the amount of manure generated in a three hundred sixty-five (365)-day period. However, there is a distinct difference between the amount generated and the amount land applied. For dry litter and poultry barns, the amount generated will be the total amount of manure and litter removed from the barns in a three hundred sixty-five (365)-day period.

COMMENT #15: The proposed definition of process wastewater excludes the formerly included precipitation-related discharges, both precipitation on items like compost piles or manure and storm water runoff from land application during frozen, snow-covered, or saturated soil or when soil conditions or application rates exceed the maximum nitrogen utilization of the vegetation grown. This amounts to a massive loophole that makes the CAFO producers' responsibilities less clear and also threatens Missouri water quality. Producers have a responsibility to manage water on their site so that it does not degrade Missouri waters, and the proposed definition in this rule fails to convey that responsibility. The definition should properly include both references to precipitation as follows: "any precipitation which comes into contact with manure, litter, or bedding or any other raw material or intermediate or final material or product used in the production of animals or direct products . . . storm water runoff from animal confinement areas and loading and unloading areas; storm water runoff from deposits of airborne dust from building ventilation systems or spillage of feed or manure; discharges from land application fields that occur during land application; and storm water runoff from land application fields if soil conditions or if application rates exceed the maximum nitrogen utilization of the vegetation grown." This definition is critical to providing adequate protection for

Missouri waters because a CAFO poorly designed or managed without the guidance provided here will contaminate Missouri waters every time it rains. Such discharges could otherwise be avoided. It cannot be the department's intent to exclude open manure piles, for example, from regulation when they pose an obvious threat to water quality. Please correct this oversight.

**RESPONSE:** No changes were made as a result of this comment. The scope of this proposed rulemaking was limited strictly to incorporating, without change, federally mandated rule changes promulgated by the U.S. Environmental Protection Agency (EPA) in 2003. The department has adopted the federal definition of process wastewater along with other definitions to aid in maintaining consistent regulatory implementation. Consistent definitions between federal and state rules also allow regulations to be more easily understood. This will make it easier to utilize EPA's interpretations, but more importantly, the regulated community will find it easier to navigate and understand Missouri's regulatory requirements. Several statements within this comment are not factual. Producers do have a responsibility to appropriately manage process water at their site; however, this definition change does not lessen the responsibility by CAFOs in any way. Many of the specific statements in this comment more accurately describe situations that might constitute a discharge, which is more appropriately addressed in section (3) Permits and the Effluent Limitation Guidelines (ELGs) section that has been incorporated from the EPA rule. The intent of this definition is only to describe what the meaning of the term process wastewater shall be. The proposed definition includes "any water which comes into contact with any raw material, products or byproducts . . ." The term "any water" is a broad term that would include precipitation and storm water, and therefore, no change to this definition is warranted.

**COMMENT #16:** "Agricultural storm water runoff" only receives an exemption when "manure, litter, or process wastewater is applied in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater." The second sentence omits this condition, seeming to contradict the first. The second sentence, in order to achieve genuine clarity, should add the stipulations in the law. The phrase "when manure, litter, or process wastewater is applied in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater" should be added to it to prevent misunderstandings, or the second sentence should be omitted entirely because the first sentence completely conveys the concept.

**RESPONSE AND EXPLANATION OF CHANGE:** The department has reworded paragraph (2)(B)7., located on page 1138, to improve clarity of what constitutes "Agriculture storm water discharge."

**COMMENT #17:** By the department's definition, a CAFO is "an operating location where animals have been, are, or will be stabled or confined and fed or maintained for a total of forty-five (45) days or more in any twelve (12)-month period, and a ground cover of vegetation is not sustained over at least fifty percent (50%) of the animal confinement area and meets one (1) of the following criteria: a Class I operation or a Class II operation that discharges through a man-made conveyance or where pollutants are discharged directly into waters of the state which originate outside of and pass over, across, or through the operation or otherwise come into contact with the animals in the operation." This definition, together with the stronger and more realistic process wastewater definition noted above, allows the state to regulate the ever-increasing numbers of CAFOs which happen to be Class IIs. This authority then requires the implementation of Best Management Practices, which are practices designed to limit land application requiring a one hundred foot (100') setback to down-gradient surface waters, open tile line intake structures, sinkholes, agricultural well heads, or other conduits to surface waters. By weakening critical definitions, these common sense setback provisions are in jeopardy. This rule should make clear that CAFOs—

all CAFOs—must observe common sense rules that protect the wells of their neighbors, their neighbor's ponds, and Missouri's streams. It should be clear that the Best Management Practices under subsection (3)(G) apply to all CAFOs. Instead, the proposed amendment muddies the waters figuratively and may, in effect, muddy them literally. **RESPONSE:** No changes were made as a result of this comment. The additions and revisions to definitions within this proposed rulemaking have not weakened or placed this rule into jeopardy. It is not the department's intent to unduly manipulate the authorities explicitly granted to the department by state statute and regulations as it pertains to regulating CAFOs. Section 640.710, RSMo, gives expressed authority of the department to promulgate rules regulating Class I facilities. Although there is no expressed permission of regulating Class II size facilities in statute, the department has kept the existing definition of a CAFO, which includes the provisions granting the department discretion for designating Class II size facilities as CAFOs when they discharge directly into waters of the state. Severe circumstances would be necessary to prompt the department to exercise its discretion in designating a Class II size operation as a CAFO. The circumstances referenced in comment #15, which deal with ELGs or situations that might constitute a discharge, would not be a basis for a Class II size facility to be designated. In fact, the ELGs within EPA rule, and adopted by reference in this proposed amendment, do not apply to class II size facilities even if they are designated as a CAFO. Because of this, the interpretation within this comment that the department has authority to require the BMPs at Class II sites designated as a CAFO is incorrect. EPA has encouraged permitting authorities to provide Class II and smaller operations an opportunity to address the cause of the discharges before defining or designating the operation a CAFO. Within the preamble of 2003 final EPA rule, EPA provided the following guidance and suggestions for Class II and smaller size facilities (EPA terms these medium- and small-size operations):

"EPA promotes the efforts of States to actively use a variety of strategies to work with owners and operators of AFOs to ensure that they do not meet the criteria that would result in their being defined or designated as Small or Medium CAFOs."

"EPA encourages States to maximize use of voluntary and other non-NPDES programs to support efforts by medium and small operations to implement appropriate measures and correct problems that might otherwise cause them to be defined or designated as a CAFO. EPA encourages States to use the flexibility available under the rule so that their State non-NPDES programs complement the required regulatory program. The following examples can illustrate opportunities for this State flexibility:

- States are encouraged to work with State agriculture agencies, conservation districts, USDA and other stakeholders to create proactive programs to fix the problems of small and medium operations in advance of compelling the facilities to apply for NPDES permits.
- Where a small or medium facility has been covered by an NPDES permit, the permitting authority may allow the facility to exit the permit program at the end of the 5-year permit term if the problems that caused the facility to be defined or designated as a CAFO have been corrected to the satisfaction of the permitting authority.
- A small or medium AFO might be taking early voluntary action in good faith to develop and implement a comprehensive nutrient management plan, yet might have an unexpected situation that could be the basis for the facility's being defined or designated as a CAFO. EPA encourages the permitting authority to provide an opportunity to address the cause of the discharge before defining or designating the operation a CAFO."

**COMMENT #18:** Why are we reducing the setbacks to down gradient surface waters, open tile line intake, sinkholes, agricultural well heads, or other conduits to surface water? Where are losing streams, creeks, rivers, and connections between surface and ground water? It

should remain three hundred feet (300'), or better five hundred feet (500'), with a fifty-foot (50') vegetative cover. The exception found in subparagraph (3)(G)2.B. should be removed from the rules completely. As described in subparagraph (3)(G)3.C., the soil test analysis requirement should be a minimum of three (3) years since these operations are not normal operations that apply fertilizer.

RESPONSE: No change has been made as a result of this comment. The scope of this proposed rulemaking was limited strictly to incorporating, without change, federally mandated rule changes promulgated by the U.S. Environmental Protection Agency (EPA) in 2003. The federal rule contained a one hundred foot (100') setback requirement for surface waters, open tile intake structures, sinkholes, agricultural well heads, or other conduits to surface waters. The proposed amendment language reflects the intent of the federal rule. The department's CAFO regulation has previously not addressed land application setbacks; however, for permitting purposes, we have historically relied on the regulations found in 10 CSR 20-8, the design guides, for setting setback restrictions in our permits. It is not the department's intent, as part of this rulemaking, to remove or replace the three hundred foot (300') setback to losing streams, sinkholes, and other sensitive features. The department will recommend that the Missouri Clean Water Commission direct us to continue to use the design guides as justification for our permit restrictions and further address this issue during Phase II rulemaking.

COMMENT #19: In subsection (3)(H), Class IA Requirements (page 1142), these requirements must include all Class I CAFOs. With the information available now on the potential pollution problems from these operations, this seems like the only responsible thing to do. This should also be true for all CAFOs, including Class IIs, that disperse their waste through a manmade conveyance on vegetative surfaces that are harvested and tilled on an annual basis. Section (4), Design Standards (page 1142), should require that all Class I CAFOs have backflow systems designed and tested every three (3) years. Section (7), CAFO Indemnity Fund (page 1143), should require that all Class I CAFOs be required to comply with the indemnity fund requirements.

RESPONSE: No change has been made as a result of this comment. This comment is beyond the scope of this rulemaking effort. The scope of this proposed rulemaking was limited strictly to incorporating, without change, federally mandated rule changes promulgated by the U.S. Environmental Protection Agency (EPA) in 2003. Subsection (3)(H), page 1142 and Section (7), page 1143, along with the backflow prevention requirement that are referred to in this comment, strictly apply only to Class IA CAFOs, the largest classification. The Class IA requirements in these sections were specific requirements applicable only to Class IA CAFOs written into statutes by the legislature in 1996. The legislature did not intend these requirements to apply to Class IB, IC, or II size operations.

COMMENT #20: A staff comment pointed out a typing error in the public fiscal note worksheet. Staff hours divided by 2,080 equals .36 FTE, not 3.6 FTE.

RESPONSE AND EXPLANATION OF CHANGE: A change has been made as a result of this comment. See the worksheet, "\*\*\*\*The total hours of staff review required = 746 (746 Total Hours / 2,080 hours [1FTE] = .36 FTE)" for the change.

COMMENT #21: A staff member commented that the form that follows the rule in the *Code of State Regulations* is outdated and should be removed.

RESPONSE AND EXPLANATION OF CHANGE: The form will be removed from the *Code of State Regulations*.

## 10 CSR 20-6.300 Concentrated Animal Feeding Operations

### (2) General.

#### (B) Exemptions.

1. Small scale pilot projects or demonstration projects for beneficial use that do not exceed a period of one (1) year may be exempted by written project approval from the permitting authority, provided the facilities are three hundred (300) animal units or smaller. The department may extend the permit exemption for up to one (1) additional year after review of the first year's results. A permit application shall be submitted at least ninety (90) days prior to end of the demonstration period if the facility intends to continue operation.

2. A permit is not required for animal feeding operations of less than three hundred (300) animal units when the operation utilizes applicable best management practices approved by the department.

3. Permits are not required for the composting of dead animals at Class IC or smaller operations when—

A. The compost operation and raw materials storage are located in enclosed buildings with impermeable floors; or

B. The unroofed compost area covers less than five thousand (5,000) square feet and is underlain with an impermeable floor, and raw materials are covered by a tarp or impermeable cover.

4. Permits are not required for storage buildings for dry litter, compost, or similar materials, if the storage structure is roofed and has impermeable floors.

5. Minor piping changes and other minor modifications as determined by the department.

6. Livestock markets are exempt from the provisions of 10 CSR 20-6.300(3)(A)–(B), 10 CSR 20-6.300(7), 10 CSR 20-6.300(3)(H)1.–2., 10 CSR 20-6.300(4)(D)–(E).

7. Agricultural storm water discharges and return flows from irrigated agriculture. A precipitation related discharge of manure, litter, or process wastewater from land application areas under the control of a CAFO is considered an agricultural storm water discharge when manure, litter, or process wastewater is applied in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater.

### (3) Permits.

(G) Best Management Practices (BMPs)—Each CAFO subject to this section that land applies manure, litter, or process wastewater must do so in accordance with the following practices:

1. Permits shall require a nutrient management plan be developed and implemented according to the requirements of 10 CSR 20-6.300(5). The plan must also incorporate the requirements of paragraphs (3)(G)2. and (3)(G)3. based on a field-specific assessment of the potential for nitrogen and phosphorus transport from the field and that addresses the form, source, amount, timing, and method of application of nutrients on each field to achieve realistic production goals, while minimizing nitrogen and phosphorus movement to surface waters. New CAFOs that apply for a construction permit after February 26, 2009, must have a nutrient management plan that complies with this paragraph developed and implemented upon the date of operating permit coverage. All other CAFOs that obtain operating permit coverage must have their nutrient management plans developed and implemented prior to renewal of the permit.

2. Manure, litter, or process wastewater shall not be land applied closer than one hundred feet (100') from any down-gradient surface waters, open tile line intake structures, sinkholes, agricultural well heads, or other conduits to surface waters unless the operation complies with one (1) of the following compliance alternatives:

A. For surface and subsurface applications, a setback consisting of a thirty-five foot (35') wide vegetated buffer where applications of manure, litter, or process wastewater are prohibited; or

B. The CAFO demonstrates that a setback or buffer is not necessary because implementation of alternative conservation practices or field-specific conditions will provide pollutant reductions equivalent or better than the reductions that would be achieved by the one hundred foot (100') setback.

3. Application rates for manure, litter, and other process wastewater applied to the land application area must minimize phosphorus



and nitrogen transport from the field to surface waters in compliance with the technical standards for nutrient management established by the Clean Water Commission. Such technical standards for nutrient management shall—

A. Include a field-specific assessment of the potential for nitrogen and phosphorus transport from the field to surface waters, and address the form, source, amount, timing, and method of application of nutrients on each field to achieve realistic production goals, while minimizing nitrogen and phosphorus movement to surface waters; and

B. Include appropriate flexibilities for any CAFO to implement nutrient management practices to comply with the technical standards, including consideration of multi-year phosphorus application on fields that do not have a high potential for phosphorus runoff to surface water, phased implementation of phosphorus-based nutrient management, and other components, as determined appropriate by the director.

C. Require that manure be analyzed a minimum of once annually for nitrogen and phosphorus content, and soil be analyzed a minimum of once every five (5) years for phosphorus content. The results of these analyses are to be used in determining application rates for manure, litter, and other process wastewater.

**FISCAL NOTE  
PUBLIC COST**

- I. Department Title: Department of Natural Resources**
- Division Title: Clean Water Commission**
- Chapter Title: Water Quality**

<b>Rule Number and Name:</b>	<b>10 CSR 20-6.300 Concentrated Animal Feeding Operations</b>
<b>Type of Rulemaking:</b>	Proposed Rule Amendment

**II. SUMMARY OF FISCAL IMPACT**

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
<b>Department of Natural Resources</b>	<b>\$31,343.39 for .36 FTE</b>

**III. WORKSHEET**

<b>NRD/ES/Permit/Fee/Other Expenses</b>	<b>FY 2009 (4 Months)</b>	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>	<b>FY 2013</b>	<b>FY 2014</b>
Salaries (Based on EE II Range 29 Step L - .36 FTE)	(\$14,732.00)	(\$18,209.00)	(\$18,755.00)	(\$19,317.65)	(\$19,897.18)	(\$20,494.09)
Fringe Benefits @ 45.26% * .36 (Based on FY08 Rate)	(\$6,668.00)	(\$8,241.00)	(\$8,489.00)	(\$8,743.67)	(\$9,005.98)	(\$9,276.16)
Equipment and Expense (.36 of Standard EE Coding)	(\$2,003.00)	(\$2,063.00)	(\$2,126.00)	(\$2,189.78)	(\$2,255.47)	(\$2,323.14)
<b>TOTAL FUND COSTS - ALL CATEGORIES</b>	<b>(\$23,403.00)</b>	<b>(\$28,513.00)</b>	<b>(\$29,370.00)</b>	<b>(\$30,251.10)</b>	<b>(\$31,158.63)</b>	<b>(\$32,093.39)</b>
(746 Total Hours / 2,080 hours [1 FTE] = .36 FTE)						
<b>NRD/ES/Permit/Fee/Other Revenue</b>	<b>FY 2009 (4 Months)</b>	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>	<b>FY 2013</b>	<b>FY 2014</b>
CAFO Permit Fees <55 lbs (5 new permits per year)	\$750.00	\$0.00	\$0.00	\$0.00	\$0.00	\$750.00
(5 Apps * \$150 Fee Paid Every Five Years)						
<b>Total Permit Fee Revenue:</b>	<b>\$750.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$750.00</b>

NPDES Permit Fee Fund Revenue	FY 2009 (4 Months)	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
Estimated Net Effect on Permit Fee Fund:	(\$22,653.00)	(\$28,513.00)	(\$29,370.00)	(\$30,251.10)	(\$31,158.63)	(\$31,343.39)
<b>Estimated Net Effect on Permit Fee Fund Total Revenue:</b>	<b>(\$22,653.00)</b>	<b>(\$28,513.00)</b>	<b>(\$29,370.00)</b>	<b>(\$30,251.10)</b>	<b>(\$31,158.63)</b>	<b>(\$31,343.39)</b>

Fiscal impact derived from the three primary components in the proposed amendment –

\* New permit application requirements, due to a lower animal threshold change including swine <55 lbs., i.e. estimated review of 5 applications in the 1<sup>st</sup> year of a 5-year construction permit or 5 x 20 hrs. per application = 100 hrs. per year

\*\* New loss assessment requirements for phosphorus, reducing the load in surface water to comply with the new Nutrient Management Plan criteria, i.e. estimated review of 60 applications or 60 x 5 hrs. per application = 300 hrs. per year

\*\*\* New annual reporting requirements, i.e. reviewing 1/3 of an estimated 520 permits per year or .333 x 520 x 2 staff hrs. per report = 346 hrs. per year

\*\*\*\* Total hours of staff review required = 746 (746 Total Hours / 2,080 hours [1FTE]) = .36 FTE)

NPDES Permit Fee Fund Revenue for an estimated 5 operating permit applications, i.e. 5 permit applications. x \$150 fee, paid every five years or \$750.00.

#### IV. ASSUMPTIONS

The duration of the proposed rule is indefinite. There is no sun-set clause. Costs imposed by the proposed rule are shown on an annual basis. It is assumed that additional years will be consistent with the assumptions used to calculate the annual costs identified in this fiscal note.

The department must review annual reports of permit operators to ensure compliance with the new federal requirements. These reviews of new application requirements, the new phosphorus loss assessment and Nutrient Management Plan (NMP) criteria and review of annual reports, requires additional staff hours.

For the department, the employee costs are calculated using the annual salary multiplied by the FY 2008, 45.26% fringe benefit rate. It is anticipated that the total cost will recur for the life of the rule, may vary with inflation and is expected to increase at the rate projected by the Legislative Oversight Committee. Equipment and expense are calculated according to a standard

code for FY2008, Environmental Engineer II. First-year equipment and expense costs reflect the initial office set-up for the employee.

It is anticipated that all costs are expected to increase at the rate projected by the Legislative Oversight Committee. A 3% rate of inflation is applied to personnel costs. The FY2009 reflects that portion of the first full fiscal year the rule is effective, or 4 months, and reflects the new permit application requirements.

The Water Protection Program, permitting and engineering section, conducts permit reviews prior to issuing a construction permit. The technical review is conducted by an Engineer II with expertise in environmental engineering analysis.

The public fiscal note for this rulemaking reflects the cost to the department resulting from the technical review and analysis of the estimated five (5) permit applications, new NMP criteria, and the annual reporting requirements, resulting in 746 total hours of staff review. The Estimated Net Effect, \$22,653, on the NPDES Permit Fee Fund, is based on the fees collected, \$750.00, (\$150.00 per permit application), and accruing to fee revenues in the first year and once every five (5) years for operating permit renewals.

\* Fiscal impact is based on the new application requirements resulting in increased staff time to review operating permit applications in the first year. The new application requirements, lowering the animal threshold number for swine weighing less than 55 pounds in the animal category for nursery swine, are based on the new federal requirements.

A small number of nursery swine sites, five (5), thought to be operating within the impacted animal number range of 10,000 to 15,000, will be impacted under this proposed rulemaking. No new large nursery swine operations are expected due to current trends in the swine industry.

\*\* The amended rulemaking language includes expanded criteria to comply with the required Nutrient Management Plans (NMPs). An NMP includes the strategies producers use to ensure manure storage and manure application on farms. New requirements in the NMPs will now include plans that require phosphorus loss assessment as well as continuing to assure that surface or groundwater are not adversely affected. This is expected to result in improved manure management to protect water quality due to a greater emphasis on the proper management of animal manure at the production site and on land application sites.

Expanded Best Management Practices (BMPs) include the new phosphorus loss assessment requirement and nutrient management plan criteria necessary to meet minimum federal requirements.

\*\*\* Annual reporting requirements are needed to meet the current federal requirements. The department proposes to review one-third of the annual reports, in detail every year with an expectation that every permitted facility will receive a review of their annual report at least once per permit cycle.

These expanded requirements will help Concentrated Animal Feeding Operations (CAFO) to analyze decisions and test results from previous years and make appropriate adjustments to the nutrient management plan to maximize the nutrient benefits.

CAFOs have always been required to submit annual reports to the department. The Environmental Protection Agency has increased its reporting requirements to assure operators comply with new and current regulatory and permit practices.

The cost in the aggregate to the department is estimated to be \$31,343.39 to comply with this rulemaking. This aggregate cost may be considered a multi-year aggregate due to the cyclical nature of the permitting process and to accommodate the cyclical nature of the rule requirements. The revenue collected based on fees paid to renew the estimated number of operating permits in the first year, and the revenue collected based on fees paid to renew every (5) years thereafter, is the same, absent a change in the fees.

The Estimated Net Effect to the department's NPDES (National Pollutant Discharge Elimination System) Permit Fee Fund in FY2009 is \$22,653.00. This is the cost to the department for staff salaries, expense and equipment and fringe benefits less permit application fee revenue.

The Estimated Net Effect on the department's Permit Fee Fund in FY2010 is \$28,513.00, in FY2011 is \$29,370.00, in FY2012 is \$30,251.10, in FY2013 is \$31,158.63, and in FY2014 is \$31,343.39. FY2014 reflects the multi-year aggregate cost which will recur every 5 years.

\*\*\*\* The FY2009 is a partial fiscal year reflecting the four (4) months the rulemaking is in effect during the first year. Approximately 693 hours of staff review are possible in the first year. Of the total hours needed for review, 746, there remain approximately 52 hours that cannot be worked within the usual 40 hour week. As a result, 12 hours, or 2.4 additional hours per day in the final week of the 4 month period, are required to complete the reviews.

**Title 10—DEPARTMENT OF NATURAL RESOURCES  
Division 23—Division of Geology and Land Survey  
Chapter 1—Definitions and Organizational Structure**

**ORDER OF RULEMAKING**

By the authority vested in the department's Well Installation Board under section 256.606, RSMo 2000, the board amends a rule as follows:

10 CSR 23-1.050 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 2, 2008 (33 MoReg 1661-1664). 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:** A public hearing on this proposed amendment was held October 6, 2008, and the public comment period ended October 7, 2008. At the public hearing, the Division of Environmental Quality staff made opening statements regarding the proposed amendment, and three (3) comments were made. There were an additional four (4) comments made by staff.

**COMMENT #1:** Staff commented that certificates of deposits used for proof of financial responsibility should only be accepted if the certificate is automatically renewable. This will eliminate the need for the permittee to resubmit their proof of financial responsibility.  
**RESPONSE AND EXPLANATION OF CHANGE:** Based on this comment, subsection (3)(C) will be changed to add that certificates of deposit used for financial responsibility must be automatically renewable for a period of two (2) years.

**COMMENT #2:** Staff commented that if a certificate of deposit is used for proof of financial responsibility, any interest accrued on the certificate of deposit should be made payable to the permittee. This will eliminate interest being paid to the department and will instead be paid to the permittee.  
**RESPONSE AND EXPLANATION OF CHANGE:** Based on this comment, subsection (3)(C) will be changed to add that any interest accrued on a certificate of deposit will be made payable to the permittee.

**COMMENT #3:** Staff commented that the rule should address the issue of an apprentice who completes all or a part of the apprenticeship but then decides not to renew the permit for the next year.  
**RESPONSE AND EXPLANATION OF CHANGE:** Based on this comment, subsection (1)(G) will be added to include language that allows an apprentice, who has terminated their apprenticeship, to reapply, within one (1) year of cancellation, to be reinstated at the point of termination.

**COMMENT #4:** Staff commented that the rule should address current permittees who wish to apply for a different type of non-restricted permit.  
**RESPONSE AND EXPLANATION OF CHANGE:** Based on this comment, section (3) will be changed to add language which requires an applicant holding a current permit with the state of Missouri to be permitted under the same conditions as a person permitted in another state.

**COMMENT #5:** Ms. Lois Keeven, Keeven Heating & Air, commented that the twenty-five thousand dollar (\$25,000) bond was excessive. She stated that other licensees her company holds only require a ten thousand dollar (\$10,000) bond.  
**RESPONSE:** The Well Installation Board voted to increase the amount of the bond to twenty-five thousand dollars (\$25,000) at one

of their regular scheduled board meetings to cover the costs of remediating a non-compliant well or heat pump system. No changes were made based on this comment.

**COMMENT #6:** Mr. Jay Gallagher, Custom Well Drilling, stated that the twenty-five thousand dollar (\$25,000) bond was only half of what should be required.

**RESPONSE:** The Well Installation Board voted to increase the amount of the bond to twenty-five thousand dollars (\$25,000) at one of their regular scheduled board meetings to cover the costs of remediating a non-compliant well or heat pump system. No changes were made based on this comment.

**COMMENT #7:** Mr. Gallagher commented that the board should consider requiring another form of validation of experience from either the National Groundwater Association or a drilling school to accelerate the permitting process.

**RESPONSE:** The Well Installation Board considered coursework, however, voted to establish the apprentice program to provide actual hands-on experience. No changes were made based on this comment.

**10 CSR 23-1.050 Qualifications**

(1) All applicants for a nonrestricted well installation, heat pump installation, monitoring well installation, monitoring test-hole installation, and pump installation contractor permits shall meet the following requirements:

(G) If apprentice cancels the apprenticeship, he/she may reapply, within one (1) year of termination. If the application is approved, apprentice will be reinstated at the same status as at the point of termination;

(H) Applications submitted from work performed by an apprentice in other states will be considered as long as the corresponding state has construction requirements similar to the requirements of the state of Missouri;

(I) The nonrestricted permittee responsible for the apprentice must also sign the required certification/registration form as the installation contractor and submit the form and appropriate fee to the division;

(J) At the end of the two (2)-year apprenticeship, the apprentice must submit a testing application and the appropriate testing fee for the specific (closed book) test;

(K) If, at the end of the two (2)-year period, the apprentice has not completed the required number of installations, the apprentice may apply to extend the apprenticeship on a year-by-year basis; and

(L) After completion of the apprenticeship period and passing the specific test, the apprentice must submit a contractor application, supplied by the division, with appropriate fees. After approval of the application, the division will issue the apprentice a nonrestricted permit.

(3) Applicants for the nonrestricted permit who hold a valid permit that is in good standing in another state with requirements similar to the state of Missouri's requirements, as determined by the division, or who is currently permitted with the state of Missouri, must submit the testing application, appropriate testing fee, and proof of the valid permit to be scheduled for the test. After passing the general (open book) and specific (closed book) tests with a minimum score of seventy percent (70%) on each test, the applicant must submit each of the following to the division within thirty (30) days:

(C) Proof of financial responsibility in the form of a surety bond, certificate of deposit (CD), or irrevocable letter of credit in the amount of twenty-five thousand dollars (\$25,000). The bond, CD, or letter of credit shall be:

1. Placed on file with the division;
2. Made payable to the Department of Natural Resources;
3. Issued by an institution authorized to issue such bonds in this state;

4. Certificate of deposit must be automatically renewable for timeframe covering the apprenticeship; and
5. Any interest on the certificates of deposit shall be made payable to the permittee.

**Title 10—DEPARTMENT OF NATURAL RESOURCES  
Division 23—Division of Geology and Land Survey  
Chapter 1—Definitions and Organizational Structure**

**ORDER OF RULEMAKING**

By the authority vested in the department's Well Installation Board, under section 256.606, RSMo 2000, the board amends a rule as follows:

**10 CSR 23-1.060 Application for a Permit is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 2, 2008 (33 MoReg 1664). 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 20—DEPARTMENT OF INSURANCE,  
FINANCIAL INSTITUTIONS AND PROFESSIONAL  
REGISTRATION  
Division 2030—Missouri Board for Architects,  
Professional Engineers, Professional Land Surveyors,  
and Landscape Architects  
Chapter 5—Examinations**

**ORDER OF RULEMAKING**

By the authority vested in the Missouri Board for Architects, Professional Engineers, Professional Land Surveyors, and Landscape Architects under section 327.041, RSMo Supp. 2007 and sections 327.221 and 327.241, RSMo 2000, the board amends a rule as follows:

**20 CSR 2030-5.080 Standards for Licensure—Engineers  
is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 2008 (33 MoReg 1727-1729). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The board received two (2) comments from Mr. Kerry Herr in support of and seeking clarification on the proposed amendment.

COMMENT #1: Mr. Herr inquired as to how the proposed changes would affect licensure by comity for applicants who hold a Professional Engineer (PE) license from another state based on a non-accredited degree and who have previously passed both the Fundamentals of Engineering (FE) and PE exams.

RESPONSE: The board concluded that if an individual who has completed an engineering education program that is non-accredited and not deemed substantially equivalent and who then earns a graduate engineering degree from a United States school with an Engineering Accreditation Commission/Accreditation Board for

Engineering and Technology, Inc (EAC/ABET) accredited undergraduate or graduate program in an equivalent discipline, he/she should then be accepted for the licensure process. If an applicant has already taken and passed the National Council of Examiners for Engineering and Surveying (NCEES) examinations, specifically the FE Examination and the PE Examination, the Missouri Board would accept official verification of the applicant having passed those examinations and would not require reexamination. Since Mr. Herr was merely seeking clarification to the proposed amendment, no changes were made as a result of this comment.

COMMENT #2: Mr. Herr inquired if a master's degree in engineering will allow for an undergraduate degree in engineering technology to be validated and a Missouri Professional Engineer license issued.

RESPONSE: The board concluded that if an applicant who has an undergraduate degree in engineering technology and who then earns a graduate engineering degree from a United States school with an EAC/ABET accredited undergraduate or graduate program in an equivalent discipline, he/she should then be accepted for the engineering licensure process in Missouri. No changes were made as a result of this comment.