

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

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 If an existing rule is to be amended or rescinded, it will have a heading of proposed amendment or proposed rescission.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

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

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

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

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

Proposed Amendment Text Reminder:
Boldface text indicates new matter.

[Bracketed text indicates matter being deleted.]

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

PROPOSED AMENDMENT

3 CSR 10-4.117 Prohibited Species. The commission proposes to amend subsection (2)(D) of this rule.

PURPOSE: This amendment adds marbled crayfish, *Procambarus marmoratus*, to the prohibited species list.

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

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

Dreissena polymorpha; quagga mussels, *Dreissena rostriformis bugensis*; mysterysnails of the genus *Cipangopaludina*.

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. **and section 252.240, RSMo 2000.** Original rule filed April 20, 2005, effective Sept. 30, 2005. For intervening history, please consult the *Code of State Regulations*. Amended: Filed Sept. 30, 2010.

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 Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

Title 3—DEPARTMENT OF CONSERVATION Division 10—Conservation Commission Chapter 5—Wildlife Code: Permits

PROPOSED AMENDMENT

3 CSR 10-5.225 Permits: Permit Issuing Agents; Service Fees; Other Provisions. The commission proposes to amend section (3) of this rule.

PURPOSE: This amendment allows the Conservation Commission to set the amount of a customer convenience fee for consumers who choose to purchase permits over the Internet.

(3) A customer convenience fee [of two dollars (\$2)] to be determined by the Conservation Commission shall be charged for telephone or electronic media sales. Customers must agree to pay this fee before the permit will be issued.

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. **and section 252.240, RSMo 2000.** This version of rule filed Aug. 26, 1975, effective Dec. 31, 1975. For intervening history, please consult the *Code of State Regulations*. Amended: Filed Sept. 30, 2010.

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 Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

Title 3—DEPARTMENT OF CONSERVATION Division 10—Conservation Commission Chapter 5—Wildlife Code: Permits

PROPOSED AMENDMENT

3 CSR 10-5.436 Resident Conservation Order Permit. The commission proposes to amend this rule.

PURPOSE: This amendment will enable a more succinct description of waterfowl zone boundaries in 3 CSR 10-7.440.

To pursue, take, possess, and transport blue, snow, or Ross's geese during the Conservation Order in accordance with federal regulations and as prescribed in 3 CSR 10-7.440[(3)/(1)1]. Fee: Five dollars (\$5).

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.240, RSMo 2000. Original rule filed Oct. 10, 2008, effective July 1, 2009. Amended: Filed Sept. 30, 2010.

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 Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 5—Wildlife Code: Permits**

PROPOSED AMENDMENT

3 CSR 10-5.567 Nonresident Conservation Order Permit. The commission proposes to amend this rule.

PURPOSE: This amendment will enable the commission to provide a more succinct description of waterfowl zone boundaries in 3 CSR 10-7.440.

To pursue, take, possess, and transport blue, snow, or Ross's geese during the Conservation Order in accordance with federal regulations and as prescribed in 3 CSR 10-7.440[(3)/(1)1]. Fee: Forty dollars (\$40).

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.240, RSMo 2000. Original rule filed Oct. 10, 2008, effective July 1, 2009. Amended: Filed Sept. 30, 2010.

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 Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 6—Wildlife Code: Sport Fishing: Seasons,
Methods, Limits**

PROPOSED AMENDMENT

3 CSR 10-6.410 Fishing Methods. The commission proposes to amend sections (1), (5), (6), (8), and (12) and subsection (2)(C) of this rule.

PURPOSE: This amendment adds the use of Conservation Numbers as a way to identify equipment being used by fishers, includes underwater lights as an approved method to aid bowfishers with identification of fish, and adds atlatl as a permitted method for taking fish under certain conditions.

(1) Fish may be taken by the use of pole and line, trotline, throwline, limb line, bank line, jug line, gig, bow, crossbow, underwater spearfishing, snagging, snaring, grabbing, or atlatl, but only as specifically authorized in 3 CSR 10-6.415 through 3 CSR 10-6.550. No person may attempt to take fish by rock or hand fishing, with or without hook. Live bait, mussels, clams, bullfrogs, green frogs, common snapping turtles, and soft-shelled turtles may be taken only as specifically authorized in 3 CSR 10-6.605 through 3 CSR 10-6.620.

(2) Number of Poles and Hooks.

(C) Trotlines and throwlines of more than one (1) individual may be joined together, but the number of hooks in the aggregate shall not exceed the prescribed number for one (1) individual on the waters that are being fished, and the lines must be labeled with each person's full name and address or **Conservation Number**.

(5) No person may use any explosive, poison, chemical, electrical device, or equipment capable of transmitting underwater signals to kill, attempt to kill, or stupefy fish, and no material and equipment may be possessed for those purposes on waters of the state or adjacent banks.

(6) Fish not hooked in the mouth or jaw, except those legally taken by **atlatl**, snagging, snaring, grabbing, gig, bow, crossbow, or underwater spearfishing must be returned to the water unharmed immediately.

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

(12) As an aid to fishing methods, an artificial light may be used only above the water surface, except that underwater lights may be used to attract fish while fishing by pole and line **and when bowfishing on impoundments as authorized by 3 CSR 10-6.550**.

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.240, RSMo 2000. Original rule filed June 13, 1994, effective Jan. 1, 1995. For intervening history, please consult the Code of State Regulations. Amended: Filed Sept. 30, 2010.

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 Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 6—Wildlife Code: Sport Fishing: Seasons,
Methods, Limits**

PROPOSED AMENDMENT

3 CSR 10-6.525 Paddlefish. The commission proposes to amend section (4) of this rule.

PURPOSE: This amendment corrects a punctuation error.

(4) Length Limits: All paddlefish less than twenty-four inches (24") in body length, measured from the eye to the fork of the tail, must be returned to the water unharmed immediately after being caught, except[;]—

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.240, RSMo 2000. Original rule filed June 13, 1994, effective Jan. 1, 1995. For intervening history, please consult the *Code of State Regulations*. Amended: Filed Sept. 30, 2010.

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 Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 6—Wildlife Code: Sport Fishing: Seasons,
Methods, Limits**

PROPOSED AMENDMENT

3 CSR 10-6.605 Live Bait. The commission proposes to amend section (4) of this rule.

PURPOSE: This amendment clarifies that fish taken by live bait methods that do not meet specified length limits must be released unharmed immediately after being caught.

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

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.240, RSMo 2000. Original rule filed June 13, 1994, effective

Jan. 1, 1995. For intervening history, please consult the *Code of State Regulations*. Amended: Filed Sept. 30, 2010.

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 Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 7—Wildlife Code: Hunting: Seasons, Methods,
Limits**

PROPOSED AMENDMENT

3 CSR 10-7.410 Hunting Methods. The commission proposes to amend subsections (1)(D) and (K) of this rule.

PURPOSE: This amendment adds the use of Conservation Numbers as a way to identify equipment being used by hunters.

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

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

(K) Cage-Type Trap. Groundhogs, rabbits, and squirrels may be taken by cage-type trap, the opening of which may not exceed one hundred forty-four (144) square inches, during the open hunting season, at any hour, by the holder of a hunting permit. Cage-type traps shall be plainly labeled on a durable material with the user's full name and address or **Conservation Number** and shall be attended daily.

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.240, RSMo 2000. Original rule filed July 22, 1974, effective Dec. 31, 1974. For intervening history, please consult the *Code of State Regulations*. Amended: Filed Sept. 30, 2010.

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 Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. To be considered, comments must be

received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 7—Wildlife Code: Hunting: Seasons, Methods, Limits

PROPOSED AMENDMENT

3 CSR 10-7.431 Deer Hunting Seasons: General Provisions. The commission proposes to amend sections (1) and (9) and subsection (5)(D) of this rule.

PURPOSE: This amendment simplifies and standardizes the language used to reference the *Fall Deer & Turkey Hunting Regulations and Information* booklet, establishes ability for authorized persons to carry concealable firearms on their person while archery deer hunting, removes the reference to a transportation tag, defines the method to invalidate the permit, and defines the requirements for tagging deer.

(1) The current *Fall Deer & Turkey Hunting Regulations and Information* booklet[, published annually in August,] is hereby [adopted as part of] incorporated in this Code [and] by [this] reference [herein incorporated]. **This booklet is published annually in August by, and [A/a] printed copy [of this booklet] can be obtained from, the Missouri Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180 and is also available online at www.missouriconservation.org. This rule does not incorporate any subsequent amendments or additions.**

(5) Deer Hunting Methods.

(D) Prohibited, in use or possession:

1. Methods restricted by local ordinance[.];
2. Self-loading firearms with capacity of more than eleven (11) cartridges in magazine and chamber combined[.] **with the exception of concealed firearms carried by persons issued a concealed carry endorsement on a driver license or non-driver license and any qualified law enforcement officer or qualified retired law enforcement officer as defined in the Federal Law Enforcement Officers Safety Act (18 USC 926B or 18 USC 926C) (Firearms possessed under this exception may not be used to take wildlife while deer hunting. Proof of this exception must be carried while hunting.);**
3. Ammunition propelling more than one (1) projectile at a single discharge, such as buckshot[.];
4. Full hard metal case projectiles[.];
5. Fully automatic firearms[.]; **and**
6. Electronic calls or electronically activated calls.

(9) Hunters who take a deer [must tag it] shall void their permit immediately [with the transportation tag portion of the permit; detaching the transportation tag voids the permit.] **by notching the month and date of harvest. The voided permit shall be attached to the deer.** Deer may be possessed and transported only by the taker until reported through the Telecheck Harvest Reporting System. All deer taken [must] shall be accurately reported through the Telecheck Harvest Reporting System by 10:00 p.m. on the day taken by the taker or in the taker's immediate presence. The Telecheck confirmation number [must] shall be recorded immediately on the deer hunting permit as indicated on the permit. [, and immediately attached to the deer by the taker. The transportation tag and deer hunting permit with confirmation number must remain attached to t/]The deer shall remain intact or as a field-dressed carcass until the deer is [processed] reported through the Telecheck Harvest Reporting System. All deer [must] shall be reported through the Telecheck Harvest Reporting

System prior to processing or being removed from the state.

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.240, RSMo 2000. Original rule filed April 29, 2004, effective May 15, 2004. For intervening history, please consult the *Code of State Regulations*. Amended: Filed Sept. 30, 2010.

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 Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 7—Wildlife Code: Hunting: Seasons, Methods, Limits

PROPOSED AMENDMENT

3 CSR 10-7.432 Deer: Archery Hunting Season. The commission proposes to amend section (1) of this rule.

PURPOSE: This amendment establishes ability for authorized persons to carry concealable firearms on their person while archery deer hunting.

(1) The archery deer hunting season is September 15, 2010, through January 15, 2011, excluding the November portion of the firearms deer hunting season. Use archery methods only; firearms may not be possessed[.] **with the following exceptions (Firearms possessed under these exceptions may not be used to take wildlife while archery hunting. Proof of this exception must be carried while hunting.):**

(A) Any person who has been issued a concealed carry endorsement on a driver license or non-driver license and such endorsement or license has not been suspended, revoked, canceled, or denied may carry concealed firearms on or about his/her person while hunting; and

(B) Any qualified law enforcement officer or qualified retired law enforcement officer as defined in the Federal Law Enforcement Officers Safety Act (18 USC 926B or 18 USC 926C) may carry concealed firearms on or about his/her person while hunting.

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.240, RSMo 2000. Original rule filed April 29, 2004, effective May 15, 2004. For intervening history, please consult the *Code of State Regulations*. Amended: Filed Sept. 30, 2010.

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 Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180,

Jefferson City, MO 65102-0180. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 7—Wildlife Code: Hunting: Seasons, Methods,
Limits**

PROPOSED AMENDMENT

3 CSR 10-7.438 Deer: Regulations for Department Areas. The commission proposes to amend this rule.

PURPOSE: This amendment simplifies and standardizes the language used to reference the *Fall Deer & Turkey Hunting Regulations and Information* booklet.

Deer may be hunted on lands owned or leased by the department and on lands managed by the department under cooperative agreement as authorized in the current *Fall Deer & Turkey Hunting Regulations and Information* booklet, [published annually in August. This publication] which is incorporated in this Code by reference. This booklet is published annually in August by, and [A]a printed copy [of this booklet is published by and] can be obtained from, the Missouri Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. It] and is also available online at www.missouri-conservation.org. This rule does not incorporate any subsequent amendments or additions.

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.240, RSMo 2000. Original rule filed Oct. 8, 2004, effective March 30, 2005. For intervening history, please consult the *Code of State Regulations*. Amended: Filed Sept. 30, 2010.

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 Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 7—Wildlife Code: Hunting: Seasons, Methods,
Limits**

PROPOSED AMENDMENT

3 CSR 10-7.445 Bullfrogs and Green Frogs: Seasons, Methods, Limits. The commission proposes to amend this rule.

PURPOSE: This amendment adds the *atlatl* as a method allowed for taking bullfrogs and green frogs with a hunting permit.

Bullfrogs and green frogs may be taken from sunset, June 30 through October 31, by the holder of a hunting permit with a .22 caliber or smaller rimfire rifle or pistol, pellet gun, bow, crossbow, *atlatl*, or by hand or handnet. An artificial light may be used. Daily limit: eight (8) frogs in the aggregate; possession limit: sixteen (16) frogs

in the aggregate. Only the daily limit of frogs may be possessed upon the waters and banks thereof where daily limits apply. (See 3 CSR 10-6.615 for taking frogs by fishing methods.)

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.240, RSMo 2000. Original rule filed Aug. 18, 1971, effective Dec. 31, 1971. For intervening history, please consult the *Code of State Regulations*. Amended: Filed Sept. 30, 2010.

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 Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 7—Wildlife Code: Hunting: Seasons, Methods,
Limits**

PROPOSED AMENDMENT

3 CSR 10-7.455 Turkeys: Seasons, Methods, Limits. The commission proposes to amend subsections (1)(B) and (C) and amend section (2) of this rule.

PURPOSE: This amendment removes the reference to a transportation tag, defines the method to invalidate the permit, defines the requirements for tagging wild turkeys, and establishes ability for authorized persons to carry concealable firearms on their person while turkey hunting with a bow during the Fall Firearms Season or on an archer's permit.

(1) Turkeys may be pursued, taken, killed, possessed, or transported only as permitted in this rule.

(B) Fall Firearms Season. Fall season annually will be October 1 through October 31. A person possessing the prescribed turkey hunting permit may take two (2) turkeys of either sex during the season. Turkeys may be taken only by shotgun with shot no larger than No. 4 or bow; without the use of dogs, bait, electronic calls, or live decoys; from one-half (1/2) hour before sunrise to sunset in all counties except: Dunklin, McDonald, Mississippi, New Madrid, Newton, Pemiscot, and Scott. Possession of electronic calls, or shotshells loaded with shot larger than No. 4, is prohibited while hunting turkeys. A person, while in the act of pursuing or hunting turkey on a fall firearms permit, shall not have both a firearm and bow on his/her person./] with the following exceptions (Firearms possessed under these exceptions may not be used to take wildlife while hunting with a bow. Proof of this exception must be carried while hunting.):

1. Any person who has been issued a concealed carry endorsement on a driver license or non-driver license and such endorsement or license has not been suspended, revoked, canceled, or denied may carry concealed firearms on or about his/her person while hunting; and

2. Any qualified law enforcement officer or qualified retired law enforcement officer as defined in the Federal Law Enforcement Officers Safety Act (18 USC 926B or 18 USC 926C) may carry concealed firearms on or about his/her person while hunting.

(C) Fall Archery Season. A person possessing the prescribed archer's hunting permit may take two (2) turkeys of either sex from September 15 through January 15, excluding the dates of the November portion of the firearms deer season. Turkeys may be taken only by bows; without the use of dogs, bait, electronic calls, or live decoys; from one-half (1/2) hour before sunrise to one-half (1/2) hour after sunset. An archer, while in the act of pursuing or hunting turkey on an archer's permit, shall not have a firearm on his/her person[.] with the following exceptions (Firearms possessed under these exceptions may not be used to take wildlife while hunting with a bow. Proof of this exception must be carried while hunting.):

1. Any person who has been issued a concealed carry endorsement on a driver license or non-driver license and such endorsement or license has not been suspended, revoked, canceled, or denied may carry concealed firearms on or about his/her person while hunting; and

2. Any qualified law enforcement officer or qualified retired law enforcement officer as defined in the Federal Law Enforcement Officers Safety Act (18 USC 926B or 18 USC 926C) may carry concealed firearms on or about his/her person while hunting.

Possession of electronic calls is prohibited while hunting turkeys.

(2) Hunters who take a turkey [must tag it] shall void their permit immediately [with the transportation tag portion of the permit; detaching the transportation tag voids the permit.] by notching the month and date of harvest. The voided permit shall be attached to the turkey. Turkeys may be possessed and transported only by the taker until reported through the Telecheck Harvest Reporting System. All turkeys taken [must] shall be accurately reported through the Telecheck Harvest Reporting System by 10:00 p.m. on the day taken by the taker or in the taker's immediate presence. The Telecheck confirmation number [must] shall be recorded immediately on the turkey hunting permit as indicated on the permit. [, and immediately attached to the turkey by the taker. The transportation tag and turkey hunting permit with confirmation number must remain attached to the turkey with t]The head and plumage of the turkey shall remain intact until the turkey is [processed] reported through the Telecheck Harvest Reporting System. All turkeys [must] shall be reported through the Telecheck Harvest Reporting System prior to processing or being removed from the state.

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.240, RSMo 2000. Original rule filed Dec. 15, 1975, effective Dec. 31, 1975. For intervening history, please consult the Code of State Regulations. Amended: Filed Sept. 30, 2010.

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 Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 8—Wildlife Code: Trapping: Seasons, Methods**

PROPOSED AMENDMENT

3 CSR 10-8.510 Use of Traps. The commission proposes to amend section (2) of this rule.

PURPOSE: This amendment adds the use of Conservation Numbers as a way to identify equipment being used by trappers.

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

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.240, RSMo 2000. Original rule filed Sept. 20, 1957, effective Dec. 31, 1957. For intervening history, please consult the Code of State Regulations. Amended: Filed Sept. 30, 2010.

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 Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 9—Wildlife Code: Confined Wildlife: Privileges,
Permits, Standards**

PROPOSED AMENDMENT

3 CSR 10-9.105 General Provisions. The commission proposes to amend section (2) of this rule.

PURPOSE: This amendment corrects the scientific name of mink as changed in D.E. Wilson and D.M. Reeder, Mammal Species of the World: A Taxonomic and Geographic Reference.

(2) Confined wildlife held under permit within the provision of this [C]/chapter shall include only those species listed on the following Approved Confined Wildlife Species List:

Approved Confined Wildlife Species List

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

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

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

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.240, RSMo 2000. Original rule filed June 9, 1993, effective Jan. 1, 1994. For intervening history, please consult the Code of State Regulations. Amended: Filed Sept. 30, 2010.

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 Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 9—Wildlife Code: Confined Wildlife: Privileges,
Permits, Standards**

PROPOSED AMENDMENT

3 CSR 10-9.110 General Prohibition; Applications. The commission proposes to amend subsection (1)(B) of this rule.

PURPOSE: This amendment simplifies and standardizes the language used when referencing publications.

- (1) Possession of Native Species.
- (B) Native invertebrates listed in the current [edition of the Missouri Species and Communities of Conservation Concern Checklist booklet, [published annually in January] which is hereby incorporated in this Code by reference, may only be col-

lected and held by holders of a Wildlife Collector's Permit and only as prescribed in 3 CSR 10-9.425. [The Checklist is adopted as a part of this Code and by this reference is herein incorporated.] This booklet is published annually in January by, and [A/a printed copy [of this booklet] can be obtained from, the Missouri Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180 and is also available online at www.missouriconservation.org. This rule does not incorporate any subsequent amendments or addition to the Checklist.

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.240, RSMo 2000. This rule was previously filed as 3 CSR 10-4.110(5), (6), and (10). Original rule filed June 26, 1975, effective July 7, 1975. For intervening history, please consult the Code of State Regulations. Amended: Filed Sept. 30, 2010.

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 Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 3—DEPARTMENT OF CONSERVATION
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Permits, Standards**

PROPOSED AMENDMENT

3 CSR 10-9.430 Bird Banding. The commission proposes to amend this rule.

PURPOSE: This amendment clarifies the need for a person to have a Wildlife Collector's Permit in addition to a federal bird banding permit.

Birds may be livetrapped for banding and released by persons holding a valid federal permit **in addition to a Missouri Wildlife Collector's Permit.**

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. **and section 252.240, RSMo 2000.** This rule previously filed as 3 CSR 10-9.610. Original rule filed July 23, 1974, effective Dec. 31, 1974. Changed to 3 CSR 10-9.430, effective Jan. 1, 1994. Amended: Filed Sept. 30, 2010.

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 Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 9—Wildlife Code: Confined Wildlife: Privileges,
Permits, Standards

PROPOSED AMENDMENT

3 CSR 10-9.440 Resident Falconry Permit. The commission proposes to amend this rule.

PURPOSE: This amendment brings the definition of falconry into alignment with federal guidelines.

To take, [and] possess alive, **care for, and train** birds of prey (**raptors**) and to use birds of prey to take other wildlife **in accordance with 3 CSR 10-9.442 and federal falconry regulations.** Fee: [sixty dollars (\$60)] **one hundred dollars (\$100).** This permit shall remain valid for three (3) years from date of issuance. **A federal falconry permit will no longer be issued.**

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. **and section 252.240, RSMo 2000.** This rule was previously filed as 3 CSR 10-5.295. Original rule filed Aug. 15, 1973, effective Dec. 31, 1973. For intervening history, please consult the *Code of State Regulations*. Amended: Filed Sept. 30, 2010.

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 Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. To be considered, comments must be

received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 9—Wildlife Code: Confined Wildlife: Privileges,
Permits, Standards

PROPOSED AMENDMENT

3 CSR 10-9.442 Falconry. The commission proposes to amend sections (1)–(8) of this rule.

PURPOSE: This amendment brings the Missouri state falconry regulations into compliance with federal guidelines.

(1) Birds of prey may be taken, transported, possessed, or used to take wildlife [only] by holders of a falconry permit, to be issued only to residents qualified by passing with a score of at least eighty percent (80%) a written examination meeting federal standards and whose facilities and equipment meet requirements specified in this rule. The barter, sale, purchase, importation, or exportation of raptors without a permit is prohibited. **If a permittee allows his/her permit to lapse for a period of less than five (5) years, the permit may be reinstated at the level previously held. A permittee who allows his/her permit to lapse five (5) years or longer must pass the written examination with a score of at least eighty percent (80%), at which point the permit may be reinstated at the level previously held.**

(2) Only designated [types] species and numbers of birds of prey may be possessed, and [all these birds] each bird shall bear a numbered, non-reusable marker provided by the department. **Documented health problems or injuries caused by the band may qualify the permit holder for an exemption to the banding requirement for that raptor, in which case a copy of the exemption paperwork must remain in the permittee's possession when transporting or flying the raptor. If the bird with documented health issues caused by the band is a wild goshawk, Harris's hawk, peregrine falcon, or gyrfalcon, an International Organization for Standardization (ISO)-compliant microchip must be used.** Birds held under a falconry permit may be used, without further permit, to pursue and take wildlife within the following seasons and bag limits:

[(D) Doves may be taken from September 1 to December 16 from one-half (1/2) hour before sunrise to sunset. Daily limit: three (3) doves; possession limit: six (6) doves, except that any waterfowl taken by falconers must be included within these limits.]

[(E) Ducks, mergansers, and coots may be taken from sunrise to sunset from September 12, 2009, through September 27, 2009, statewide, and from one-half (1/2) hour before sunrise to sunset as follows: in the North Zone, October 24, 2009, through October 25, 2009, October 31, 2009, through December 29, 2009, and February 10, 2010, through March 10, 2010; in the Middle Zone, October 31, 2009, through November 1, 2009, November 7, 2009, through January 5, 2010, and February 10, 2010, through March 10, 2010; and, in the South Zone, November 21, 2009, through November 22, 2009, November 26, 2009, through January 24, 2010, and February 10, 2010, through March 10, 2010. Daily limit: three (3) birds singly or in the aggregate, including doves; possession limit: six (6) birds singly or in the aggregate, including doves.]

(D) Migratory game birds and waterfowl may be taken, possessed, transported, and stored only as provided in federal regulations and this Code. (Regulations for waterfowl and other migratory game birds are determined annually by the commission following receipt of regulations prescribed by the Secretary

of the Interior under authority of the Federal Migratory Bird Treaty Act. See 3 CSR 10-7.440.)

[(F)](E) Pheasants of either sex [and gray partridge] may be taken in the areas and during the periods and within the bag and possession limits listed in 3 CSR 10-7.430.

[(G)](F) Other wildlife may be taken only within the specified seasons and bag limits, except that [nonmigratory game species] pheasants, quail, turkeys, and game mammals may be taken outside of the specified falconry seasons with a daily limit of one (1) per raptor per day.

(G) Permittees may use legally obtained and captive-reared quail, pheasants, exotic partridges, and mallard ducks for training of falconry raptors. Quail, pheasants, and exotic partridges shall be marked with a permanent avian leg band prior to release. Mallard ducks shall be marked by removal of the hind toe from the right foot or by tattooing a readily discernable number or letter or combination on the web of one (1) foot.

(H) Game birds held for more than twenty-four (24) hours must be confined as specified in 3 CSR 10-9.220. For mallard ducks, such facilities must be designed and managed to immediately recapture any unharvested ducks.

(3) [Nonresidents with] A nonresident who holds a valid falconry permit and a valid Missouri hunting permit[s] may use birds of prey properly licensed in other states to take wildlife during the open season.; provided, that these p/Properly licensed [falcons] falconry raptors may, without further permit, [may] be entered and used by nonresidents to take wildlife in any regional or national falconry field trial authorized by letter from the director.

(4) [Applicants] An applicant for a permit[s] shall submit an application with information including the number of raptors possessed and the species, age, sex, date of acquisition, and source of each. An applicant under eighteen (18) years of age must have a parent or legal guardian co-sign the application. Falconry permits are issued by classes as follows:

(A) Apprentice Class—[Permittees] A permittee shall be at least [fourteen (14)] twelve (12) years old and shall have a sponsor holding a general or master falconry permit. A sponsor shall have no more than three (3) apprentices at any one (1) time. An apprentice may possess only one (1) [American kestrel (*Falco sparverius*) or one (1) red-tailed hawk (*Buteo jamaicensis*) or one (1) red-shouldered hawk (*Buteo lineatus*)] wild caught, captive-bred, or hybrid raptor of the order *Strigiformes* or *Falconiformes* except the following: Osprey, American swallow-tailed kite, Mississippi kite, bald eagle, white-tailed eagle, Steller's sea-eagle, northern harrier, Swainson's hawk, ferruginous hawk, sharp-shinned hawk, golden eagle, peregrine falcon, prairie falcon, flammulated owl, burrowing owl, barn owl, long-eared owl, and short-eared owl and may obtain not more than [one (1) replacement raptor] two (2) raptors from the wild during [any] the twelve (12)-month reporting period. An apprentice permittee may not possess a bird taken from the wild as a nestling or that is imprinted on humans;

(B) General Class—[Permittees] A permittee shall be at least [eighteen (18)] sixteen (16) years old and shall have a letter from his/her sponsor documenting at least two (2) years' experience in falconry at the apprentice level, including maintaining, training, flying, and pursuing wildlife with the raptor(s) for at least four (4) months each calendar year. A general falconer may not possess more than [two (2)] three (3) wild caught, captive-bred, or hybrid raptors of the family *Accipitridae*, or of the family *Falconidae*, or [the great horned owl (*Bubo virginianus*)] of the family *Strigidae*; but not to include any eagle or any threatened or endangered species. A general falconer shall not obtain more than two (2) raptors [for replacements] from the wild during [any] the twelve (12)-month reporting period.;

(C) Master Class—[Permittees] A permittee shall have at least

five (5) years' experience in falconry at the general class level and shall not possess more than [three (3)] five (5) wild raptors of the family *Accipitridae*, or of the family *Falconidae*, or [the great horned owl (*Bubo virginianus*)] of the family *Strigidae*; but not to include [any] more than three (3) golden eagles (*Aquila chrysaetos*) [except by written federal authorization, nor more than one (1) threatened species, nor any endangered species]. A master falconer shall not obtain more than two (2) raptors [taken] from the wild [for replacements] during [any] the twelve (12)-month reporting period. A master falconer may possess any number of captive-bred or hybrid raptors; provided, the captive-bred raptors are trained in the pursuit of wild game and used in hunting; and

(D) The twelve (12)-month reporting period begins July 1 and ends June 30 of the following year.

(5) [Applicants' f]Facilities for raptors (mew and/or weathering area) shall be inspected and certified to meet the following standards. Applicants may utilize only one (1) facility (mews or weathering area) provided it meets all requirements for protection described in this section.:

(A) Indoor facilities (mews) shall be large enough to allow easy access for caring for the raptors. Raptors shall be tethered or separated by partitions, and each bird shall be provided enough area to allow it to fully extend its wings. If raptors are untethered, all openings must be secured to prevent injury or escape, such as with vertical bars spaced narrower than the body width of the smallest raptor housed in the facility, heavy-duty netting, or other such measures and materials. There shall be adequate perches, a secure door easily closed, and at least one (1) [window protected on the inside by vertical bars spaced narrower than the width of the bird's body] opening for sunlight. The floor shall be well drained and shall permit easy cleaning. Tethered raptors may be kept inside the permittee's residence if a suitable perch is provided;

(B) Outdoor (weathering area) facilities shall be fenced and covered with netting or wire or roofed, except for perches more than six and one-half feet (6 1/2') high]. The enclosed area shall be large enough to ensure that birds flying from a perch cannot strike the fence. Raptors shall be provided [adequate] at least one (1) covered perch(es) and protection from excessive sun, wind, and inclement weather.;

(C) Falconry raptors may be temporarily kept outside in the open if they are in the immediate presence of the permittee or a designated helper.

(6) Applicants for falconry permits shall possess the following equipment:

(A) Jesses (straps attached to the legs)—at least one (1) pair of [Alymeri] jesses [or similar type] constructed of pliable leather or suitable synthetic material for use when any raptor is flown free.;

(B) Leashes and swivels—at least one (1) flexible, weather-resistant leash and one (1) strong swivel of acceptable falconry design.;

(C) Bath container—a suitable container for each raptor [two to six inches (2–6") deep and] which must be wider than the length of the raptor.;

(D) Outdoor/portable perches—a weathering area perch of acceptable design for each raptor.;

(E) Weighing device—a reliable scale or balance suitable for weighing the raptors held [and graduated to increments of not more than one-half (1/2) ounce (fifteen (15) grams)].

(7) Raptors may be taken from the wild only as follows:

(A) Raptors shall be taken only in a humane manner. Any device used to take birds of prey shall be labeled with the name and address of the user and shall be personally attended by the user [daily] at all times;

(B) Young birds not yet capable of flight (eyasses/nestlings),

except ospreys, northern harriers (marsh hawks), sharp-shinned hawks, Swainson's hawks, peregrine falcons, bald eagles, Mississippi kites, barn owls, short-eared owls, and long-eared owls, may be taken only by a general or master falconer [from May 1 to May 7 and from June 1 to June 30], and no more than two (2) eyasses[, one (1) of which may be a Cooper's hawk,] may be taken by a falconer during [this] the twelve (12)-month reporting period. The permittee must leave at least one (1) young in any nest or aerie from which an eyass is taken;

(C) [First year (passage) birds may be taken from September 1 to January 21; provided that permittees may retrap only their marked raptor at any time] Any permittee may recapture any raptor wearing falconry equipment or an escaped captive-bred raptor at any time, including those species not authorized for possession. Recaptured raptors do not count toward the authorized possession limit but must be reported to an agent of the department within five (5) business days. Recaptured raptors must be returned to the permittee who lost it, if that person may legally possess it. Disposition of a bird whose legal possession cannot be determined will be at the discretion of an agent of the department;

(D) Only American kestrels and great horned owls may be taken when over one (1)-year old[, except that raptors other than those listed in subsection (7)(B) of this rule, when taken under a depredation or special purpose federal permit may be used by general and master falconer] (haggard). Birds not listed in subsection (7)(B) of this rule may also be taken when over one (1)-year old, but only when taken under a depredation or special purpose permit by a general or master falconer. A master falconer, in any twelve (12)-month period, may take up to two (2) golden eagles from the wild only in a livestock depredation area (declared by the United States Department of Agriculture (USDA) Wildlife Services or by the governor) during the time the depredation area is in effect; and

(E) Nonresidents who have valid falconry permits [issued by their state of residence], with written authorization of the director, may take from the wild and, when banded, possess and transport raptors under conditions and at those places and times as the director may specify; providing, that this person shall possess a valid Missouri nonresident hunting permit. (Note: Persons transporting raptors so taken into another state also [must secure] may need permission for the transfer from the other state.)

(8) Special Provisions.

(A) [Persons lawfully possessing raptors prior to December 31, 1976, in excess of the number permitted under this rule, or who fail to meet the requirements of this rule, may retain but not replace these raptors, which shall be identified by permanent markers.] A falconry permit does not authorize the capture or release of raptors or the practice of falconry on public lands if such use is prohibited on those lands, or on private property, without permission from the landowner.

(B) [No] A hybrid raptor flown for falconry must have two (2) separate, attached, functioning radio transmitters to determine location. The permanent release of a hybrid or non-native raptor is prohibited. Wild-caught raptors native to Missouri may be released to the wild at any time and without authorization; however, no captive-bred raptor shall be released to the wild without written authorization from the Department of Conservation. Markers shall be removed from [these] permanently-released birds and surrendered to the department.

(C) [Feathers from captive birds may be retained and exchanged by permittees only for imping purposes.] Except as provided in this section, all feathers (including body feathers) collected from any falconry golden eagle that are not needed for imping (method of repairing broken feathers), and all golden eagle carcasses including all feathers, talons, and other parts, must be sent to the National Eagle Repository at the following address: U.S. Fish and Wildlife Service, National Eagle Repository, Rocky Mountain Arsenal, Building 128, Commerce

City, Colorado 80022. Feathers from all other captive raptors may be retained by permittees for imping purposes only.

(D) Permittees may trap, take, trade, or transfer raptors [with other permittees] only with a photocopy of Federal Form 3-186A (Migratory Bird Acquisition/Disposition Report) or electronic reporting at <http://permits.fws.gov/186A> submitted to the department within [five (5) working] ten (10) business days of the [transfer] action, and no money or other consideration may be involved, except that permittees may purchase, sell, or barter only captive-bred raptors marked with a seamless, numbered band[, and that resident permittees may transfer raptors to other resident permittees for temporary holding provided a letter stating the names and addresses of both permittees and the raptor marker number is furnished to and in the possession of the permittee holding the raptor. The permittee temporarily holding these raptors may exercise them]. A permittee must notify the department within five (5) business days of any change in facility location.

(H) Hacking (temporary release to the wild) is an approved method for conditioning raptors for falconry. Only general and master falconers may hack falconry raptors. Any raptor being hacked must be a species the permittee is authorized to possess and counts toward the permittee's possession limit. Any hybrid raptor being hacked must have two (2) separate, attached, functioning radio transmitters during hacking. No falconry bird may be hacked near the nesting area of a federally-threatened or -endangered bird species, or in any location where the raptor is likely to disturb, harm, or take a federally-threatened or -endangered animal species.

(I) Raptors held by general and master falconry permittees and used primarily for falconry may be used for public conservation education programs that must include information regarding the biology, ecological roles, and conservation needs of raptors; programs that do not address falconry and conservation education are not allowed. A fee not to exceed the amount necessary to recover participation costs is allowed. The permittee assumes all potential liability associated with such programs.

(J) Raptors held by a permittee may be cared for by another permittee at either permittee's facility for up to one hundred twenty (120) consecutive days. Birds receiving such care remain in possession of the original permittee and do not count toward the possession limit of the care-giving permittee. The original permittee must provide to the care-giving permittee a signed and dated statement authorizing the temporary possession and indicating duration of care and the privileges granted to the care-giving permittee along with federal form 3-186A showing original possession of the raptors. Raptors held by a permittee may be cared for by a non-permittee for up to forty-five (45) consecutive days, but only at the permittee's facility; birds under such care may not be flown for any reason.

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.240, RSMo 2000. This rule previously filed as 3 CSR 10-7.442. Original rule filed July 22, 1974, effective Dec. 31, 1974. For intervening history, please consult the Code of State Regulations. Amended: Filed Sept. 30, 2010.

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 Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 11—Wildlife Code: Special Regulations for
Department Areas**

PROPOSED AMENDMENT

3 CSR 10-11.155 Decoys and Blinds. The commission proposes to amend section (1) and subsection (1)(A) of this rule.

PURPOSE: This amendment modifies the provisions pertaining to blind construction on the Upper Mississippi Conservation Area by directly referencing the specifications, dates, and other requirements described in the biannual Upper Mississippi Conservation Area Waterfowl Hunting Information booklet.

(1) Decoys and blinds are permitted but must be disassembled and removed daily, except as otherwise provided in this chapter. Blinds may **not** be constructed on-site [only from willows (*Salicaceae*) and nonwoody vegetation] from woody vegetation except for willows (*Salicaceae* spp.).

(A) On those portions of Upper Mississippi Conservation Area designated as restricted waterfowl hunting areas, blind sites shall be designated and allotted through a system of registration and drawing established by the department. Blinds must be constructed [within ten (10) yards of an assigned site before October 1 and meet department specifications] in accordance with specifications, dates, and other requirements as described in the biannual Upper Mississippi Conservation Area Waterfowl Hunting Information booklet. Waterfowl may be taken only from a designated blind except that hunters may retrieve dead birds and pursue and shoot downed cripples. This rule does not apply during the early teal season and the early Canada goose season. On portions of the area designated as open, blinds may be constructed without site restrictions. Blinds or blind sites on both restricted and open portions of the area may not be locked, transferred, rented, or sold. Boats shall not be left overnight at blind sites. Blinds unoccupied at one-half (½) hour before legal shooting time may be used by the first hunter to arrive.

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.240, RSMo 2000. This rule previously filed as 3 CSR 10-4.115. Original rule filed April 30, 2001, effective Sept. 30, 2001. For intervening history, please consult the Code of State Regulations. Amended: Filed Sept. 30, 2010.

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 Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 11—Wildlife Code: Special Regulations for
Department Areas**

PROPOSED AMENDMENT

3 CSR 10-11.160 Use of Boats and Motors. The commission pro-

poses to amend section (1) of this rule.

PURPOSE: This rule establishes provisions for use of boats and motors on department areas.

(1) Boats (including sailboats) may be used on lakes and ponds except as further restricted in this chapter. Boats may not be left unattended overnight. Houseboats[,] and personal watercraft as defined in section 306.010, RSMo, are prohibited. Float tubes may be used for authorized fishing and hunting activities. Registration and a fee may be required for rental of department-owned boats. Fees [may] shall be paid prior to use.

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.240, RSMo 2000. This rule previously filed as 3 CSR 10-4.115. Original rule filed April 30, 2001, effective Sept. 30, 2001. For intervening history, please consult the Code of State Regulations. Amended: Filed Sept. 30, 2010.

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 Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 11—Wildlife Code: Special Regulations for
Department Areas**

PROPOSED AMENDMENT

3 CSR 10-11.180 Hunting, General Provisions and Seasons. The commission proposes to amend sections (3), (4), (5), (6), (17), and (24) and add section (25) of this rule.

PURPOSE: This amendment simplifies and standardizes the language used to reference the Fall Deer & Turkey Hunting Regulations and Information booklet, removes Vandalia Community Lake Conservation Area from the list of areas where hunting is prohibited and adds it to the list of areas where firearms firing single projectiles are prohibited except for deer hunting as authorized in the annual Fall Deer & Turkey Hunting Regulations and Information booklet. This amendment also removes the Anthony and Beatrice Kendzora and the Guy B. Park conservation areas from the list of areas where firearms firing single projectiles are prohibited except for deer hunting as authorized in the annual Fall Deer & Turkey Hunting Regulations and Information booklet, removes the Anthony and Beatrice Kendzora and the Platte Falls conservation areas from the list of areas where firearms firing single projectiles are prohibited except during managed deer hunts and except for twenty-two (.22) caliber or smaller rimfire firearms used to take furbearers treed with the aid of dogs, and adds the Anthony and Beatrice Kendzora, Guy B. Park, and Platte Falls conservation areas to the list of areas where firearms firing single projectiles larger than twenty-two (.22) caliber rimfire are prohibited, and eliminates the requirement for a valid area daily hunting permit requirement for deer hunting by archery methods on Saint Stanislaus Conservation Area.

(3) Hunting is prohibited on public fishing access areas less than forty (40) acres in size except for deer hunting as authorized in the *[annual] current Fall Deer [and] & Turkey Hunting Regulations and Information* booklet published in August and the *current Spring Turkey Hunting Information* booklet published in March, which are hereby incorporated in this Code by reference. *[This publication is incorporated by reference. A copy of this booklet is published by and]* A printed copy of these booklets can be obtained from the Missouri Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. It is and are also available online at www.missouriconservation.org. This rule does not incorporate any subsequent amendments or additions.

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

[(NNNNN) Vandalia Community Lake]

[(OOOOO)/(NNNNN) Wah-Kon-Tah Prairie (portion south of Highway 82)]

[(PPPPP)/(OOOOO) Wah-Sha-She Prairie]

[(QQQQQ)/(PPPPP) Walnut Woods Conservation Area]

[(RRRRR)/(QQQQQ) Warrenton Office]

[(SSSSS)/(RRRRR) White Alloe Creek Conservation Area]

[(TTTTT)/(SSSSS) Wildcat Glade Natural Area]

[(UUUUU)/(TTTTT) Wild Cherry Ridge Conservation Area]

[(VVVVV)/(UUUUU) Walter Woods Conservation Area]

[(WWWWW)/(VVVVV) Mark Youngdahl Urban Conservation Area]

(5) Firearms firing single projectiles are prohibited on the following department areas except for deer hunting as authorized in the annual *Fall Deer [and] & Turkey Hunting Regulations and Information* booklet:

[(X) Anthony and Beatrice Kendzora Conservation Area]

[(Y)/(X) LaBarque Creek Conservation Area]

[(Z)/(Y) Liberty Bend Conservation Area]

[(AA)/(Z) Little Bean Marsh Conservation Area]

[(BB)/(AA) Little Dixie Lake Conservation Area]

[(CC)/(BB) Little Prairie Conservation Area]

[(DD)/(CC) Little River Conservation Area]

[(EE)/(DD) Caroline Sheridan Logan Memorial Wildlife Area]

[(FF)/(EE) Lone Jack Lake Conservation Area]

[(GG)/(FF) Lost Valley Fish Hatchery]

[(HH)/(GG) William Lowe Conservation Area]

[(II)/(HH) Alice Ahart Mansfield Memorial Conservation Area]

[(JJ)/(II) Marais Temps Clair Conservation Area]

[(KK)/(JJ) Mo-No-I Prairie Conservation Area]

[(LL)/(KK) Mon-Shon Prairie Conservation Area]

[(MM)/(LL) Pacific Palisades Conservation Area]

[(NN) Guy B. Park Conservation Area]

[(OO)/(MM) Parma Woods Range and Training Center (north portion)]

[(PP)/(NN) Pelican Island Natural Area]

[(QQ)/(OO) James A. Reed Memorial Wildlife Area]

[(RR)/(PP) Reform Conservation Area]

[(SS)/(QQ) Rocky Barrens Conservation Area]

[(TT)/(RR) Saint Stanislaus Conservation Area]

[(UU)/(SS) Dr. O. E. and Eloise Sloan Conservation Area]

[(VV)/(TT) Sunbridge Hills Conservation Area]

[(WW)/(UU) Tipton Ford Access]

[(XX)/(VV) Treaty Line Prairie Conservation Area]

[(YY)/(WW) Tri-City Community Lake]

[(ZZ)/(XX) Valley View Glades Natural Area]

[(YY) Vandalia Community Lake Conservation Area]

[(AAA)/(ZZ) Archie and Gracie VanDerhoef Memorial State Forest]

[(BBB)/(AAA) Victoria Glades Conservation Area]

[(CCC)/(BBB) Vonaventure Memorial Forest and Wildlife Area]

[(DDD)/(CCC) Wig Wam Access]

[(EEE)/(DDD) Young Conservation Area]

(6) Firearms firing single projectiles are prohibited, except during managed deer hunts, and except furbearers treed with the aid of dogs may be taken with a twenty-two (.22) or smaller caliber rimfire firearm on the following department areas:

[(C) Anthony and Beatrice Kendzora Conservation Area]

[(D) Platte Falls Conservation Area]

[(E)/(C) Upper Mississippi Conservation Area (Dresser Island portion)]

[(F)/(D) Weldon Spring Conservation Area]

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

(24) *[On Montrose Conservation Area, f]* Firearms firing single projectiles larger than twenty-two (.22) caliber rimfire are prohibited *[.] on the following areas:*

(A) Anthony and Beatrice Kendzora Conservation Area

(B) Montrose Conservation Area

(C) Guy B. Park Conservation Area

(D) Platte Falls Conservation Area

(25) On Saint Stanislaus Conservation Area, hunting is permitted only during managed hunts or by holders of a valid area daily hunting permit, except that persons pursuing deer by archery methods are not required to possess a valid area daily hunting permit.

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.240, RSMo 2000. This rule previously filed as 3 CSR 10-4.115. Original rule filed April 30, 2001, effective Sept. 30, 2001. For intervening history, please consult the Code of State Regulations. Amended: Filed Sept. 30, 2010.

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 Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

Title 3—DEPARTMENT OF CONSERVATION Division 10—Conservation Commission Chapter 11—Wildlife Code: Special Regulations for Department Areas

PROPOSED AMENDMENT

3 CSR 10-11.181 Turkeys: Special Hunts. The commission proposes to amend this rule.

PURPOSE: This amendment simplifies and standardizes the language used to reference the Fall Deer & Turkey Hunting Regulations and Information booklet and the Spring Turkey Hunting Information booklet.

Turkeys may be hunted on department areas as authorized in the current *Spring Turkey Hunting Regulations and Information* booklet, published annually in March, and the current *Fall Deer [and] & Turkey Hunting Regulations and Information* booklet, published annually in August, both of which are hereby incorporated in this Code by reference. These [publications] booklets are [incorporated by reference.] published annually in March and August, respectively, by, and printed [C/copies [of these booklets are published by and] can be obtained from, the Missouri Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. They] and are also available online at www.missouri-conservation.org. This rule does not incorporate any subsequent amendments or additions.

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.240, RSMo 2000. Original rule filed Sept. 27, 2007, effective Feb. 29, 2008. Amended: Filed Sept. 30, 2010.

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 Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 11—Wildlife Code: Special Regulations for
Department Areas**

PROPOSED AMENDMENT

3 CSR 10-11.182 Deer Hunting. The commission proposes to amend this rule.

PURPOSE: This amendment simplifies and standardizes the language used to reference the *Fall Deer & Turkey Hunting Regulations and Information* booklet.

Deer may be hunted on department areas as authorized in the [annual] current *Fall Deer [and] & Turkey Hunting Regulations and Information* booklet. This publication is incorporated by reference, which is hereby incorporated in this Code by reference. [A copy of t/This booklet is published annually in August by, and a printed copy can be obtained from, the Missouri Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. It] and is also available online at www.missouriconservation.org. This rule does not incorporate any subsequent amendments or additions.

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.240, RSMo 2000. This rule previously filed as 3 CSR 10-4.115. Original rule filed April 30, 2001, effective Sept. 30, 2001. For intervening history, please consult the *Code of State Regulations*. Amended: Filed Sept. 30, 2010.

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 Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 11—Wildlife Code: Special Regulations for
Department Areas**

PROPOSED AMENDMENT

3 CSR 10-11.205 Fishing, Methods and Hours. The commission proposes to add paragraphs (10)(A)2. and 4. and renumber subsequent paragraphs of this rule.

PURPOSE: This amendment adds B.K. Leach Memorial Conservation Area and Eagle Bluffs Conservation Area to the list of areas where seining and trapping of live bait is permitted.

(10) Seining or trapping live bait, including tadpoles, is prohibited on all lakes and ponds, except as otherwise provided in this chapter.

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

1. Atlanta Conservation Area
2. B.K. Leach Memorial Conservation Area
- 2.]3. Bob Brown Conservation Area
4. Eagle Bluffs Conservation Area
- 3.]5. Grand Pass Conservation Area
- 4.]6. Long Branch Lake Management Lands
- 5.]7. Locust Creek Conservation Area
- 6.]8. Nodaway Valley Conservation Area
- 7.]9. Rebel's Cove Conservation Area
- 8.]10. Ted Shanks Conservation Area

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.240, RSMo 2000. This rule previously filed as 3 CSR 10-4.115. Original rule filed April 30, 2001, effective Sept. 30, 2001. For intervening history, please consult the *Code of State Regulations*. Amended: Filed Sept. 30, 2010.

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 Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 11—Wildlife Code: Special Regulations for
Department Areas**

PROPOSED AMENDMENT

3 CSR 10-11.210 Fishing, Daily and Possession Limits. The commission proposes to amend section (4) of this rule.

PURPOSE: This amendment reduces the daily limit of crappie from thirty (30) to fifteen (15) fish per day at Lake Girardeau Conservation Area.

(4) On Bellefontaine Conservation Area, **Lake Girardeau Conservation Area**, Otter Slough Conservation Area, Robert G. DeLaney Lake Conservation Area, and Schell-Osage Conservation Area, the daily limit for crappie shall be fifteen (15).

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.240, RSMo 2000. This rule previously filed as 3 CSR 10-4.115. Original rule filed April 30, 2001, effective Sept. 30, 2001. For intervening history, please consult the **Code of State Regulations**. Amended: Filed Sept. 30, 2010.

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 Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.

Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 11—Wildlife Code: Special Regulations for
Department Areas

PROPOSED AMENDMENT

3 CSR 10-11.215 Fishing, Length Limits. The commission proposes to amend section (6) of this rule.

PURPOSE: This amendment would enact a nine-inch (9") minimum length limit on crappie at Lake Girardeau Conservation Area.

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

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.240, RSMo 2000. This rule previously filed as 3 CSR 10-4.115. Original rule filed April 30, 2001, effective Sept. 30, 2001. For intervening history, please consult the **Code of State Regulations**. Amended: Filed Sept. 30, 2010.

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 Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 140—Division of Energy
Chapter 2—Energy Set-Aside Fund

PROPOSED AMENDMENT

10 CSR 140-2.010 Definitions. The division is adding new sections (2), (9), (17), (39), and (40) and amending and renumbering the remaining sections.

PURPOSE: This amendment adds definitions for five (5) new terms used in 10 CSR 140-2.020 and amends several definitions to accommodate expansion of the scope of energy-using sectors to which loans may be offered, reflect statutory revisions, or clarify rules as needed.

(2) **Agricultural entity** means a farm, ranch, or corporation engaged in growing, harvesting, or handling of crops, natural fibers, fruits, vegetables, plants or trees or feeding or care of livestock, poultry, or fish.

[(2)](3) Applicant means[, a person or persons who submits an application on behalf of an eligible organization to the department for financial assistance] **any school, hospital, small business, local government, or other energy-using sector or entity authorized by the department through administrative rule, which submits an application for loans or financial assistance to the department.**

[(3)](4) Application cycle means[, the period or periods of time each year, that the department shall accept and receive applications for financial assistance under the provisions of sections 640.651 to 640.686, RSMo.

[(4)](5) Authority means[, the [Department of Natural Resources'] Environmental Improvement and Energy Resources Authority.

[(5)](6) Authorized official means[, an individual authorized to obligate an organization or entity.

[(6)](7) Borrower means[, a recipient of a loan or other financial assistance program funds subsequent to the execution of a loan or financial assistance documents with the department or other applicable parties, **provided that a building owned by the state or an agency thereof, other than a state college or state university, shall not be eligible for loans or financial assistance pursuant to sections 640.651 to 640.686, RSMo.**

[(7)](8) Building means—

- (A) An existing structure; or
- (B) Proposed new construction; or
- (C) Any applicant-owned, group of closely situated structural units that are centrally metered or served by a central utility plant; or
- (D) An eligible portion of any of these that includes an energy-using system.

(9) **Business, industrial, and commercial entities** mean corporations or other entities registered with the secretary of state to produce, manufacture, sell, or distribute goods or commodities; or to perform or deliver services.

[(8)](10) Department means[, the Department of Natural Resources.

[(9)](11) Director means[, the [D]irector of the Department of Natural Resources.

[(10)](12) Division means[,] the Department of Natural Resources' Division of Energy.

[(11)](13) Energy conservation loan account means[,] an account to be established on the books of a borrower for purposes of tracking the receipt and expenditure of the loan funds or financial assistance, and to be used to receive and remit energy cost savings for purposes of making payments on the loan or financial assistance.

[(12)](14) Energy conservation measure (or ECM) means[,] an installation in a building or replacement or modification to an energy-using system, that is primarily intended to maintain or reduce energy consumption and reduce energy costs, or allow the use of an alternative or renewable energy source.

[(13)](15) Energy conservation project (or project) means[,] the design, acquisition, installation, operation, and commissioning of one (1) or more energy conservation measures.

[(14)](16) Energy-using sector or entity means[,] an identified portion of the state's economy, which serves to provide structure to the allocation of loan funds [see also *Eligible Sectors 10 CSR 140-2.030*].

(17) Energy-using process or system means energy-using equipment or a group of interacting mechanical or electrical components that use energy.

[(15)](18) Energy cost saving (or savings) means[,] the value, in terms of dollars, that has or is estimated to accrue from energy bill reductions or avoided costs due to an energy conservation project.

[(16)](19) Estimated simple payback means[,] the estimated cost of a project divided by the estimated annual energy cost savings.

[(17)](20) Event of default means[,] an activity or inactivity that results in the borrower's failure to discharge a duty as prescribed in the loan agreement or other documents furnished in support of the loan agreement.

[(18)](21) Facility means[,] an energy-consuming **process or** system such as a building, group of buildings, outdoor lighting systems, water and wastewater systems, heating, ventilation, or air conditioning, manufacturing processes, or other systems as determined by the department.

[(19)](22) Financial assistance means[,] public or private funds reasonably available for loan **or grant** to a sector or entity desiring to implement an energy conservation project thereby facilitating the mission of the division.

[(20)](23) Fund means[,] the "Energy Set-Aside Program Fund" established in section 640.665, RSMo.

[(21)](24) Hospital means[,] a facility as defined in subsection 2. of section 197.020, RSMo, including any medical treatment or related facility controlled by a hospital board.

[(22)](25) Hospital board means[,] the board of directors having general control of the property and affairs of the hospital facility.

[(23)](26) Incremental cost means[,] the additional cost, as approved by the department, of new construction due to the addition, design, and installation of higher efficiency or renewable energy options compared to acceptable minimum efficiency, consistent with regional minimum design practices, traditional design practices, or local codes where applicable.

[(24)](27) In-kind labor means[,] the labor costs of an ECM that are performed by the borrower's employees and that may include wages, benefits, and other direct overhead costs as approved by the department.

[(25)](28) Interest means[,] accrued interest on loans charged by the department.

[(26)](29) Late payment fee means[,] a penalty to be charged by the department on loan payments past due.

[(27)](30) Loan agreement means[,] a document executed by and among the applicant(s), the department, and other funding source(s), if applicable, that details all terms and requirements under which the loan will be made and is to be repaid.

[(28)](31) Local government means[,] any county, city, or village; or any hospital district as such districts are defined in section 206.010, RSMo; or any sewer district as such districts are defined in section 249.010, RSMo; or any water supply districts as such districts are defined in section 247.010, RSMo; or any ambulance district as such districts are defined in section 190.010, RSMo; or any subdistrict of a zoological park and museum districts as such districts are defined in section 184.352, RSMo.

[(29)](32) Loan amount means[,] the amount, stated in dollars in the loan agreement, determined by the department as eligible costs plus interest accrued that shall be repaid by the borrower.

[(30)](33) Not-for-profit organization means[,] any corporation, trust, association, cooperative, or other organization which is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest; is not organized primarily for profit; *and* uses its net proceeds to maintain, improve, and/or expand its operations; **is tax exempt under the Internal Revenue Code; and is registered and in good standing with the secretary of state.**

[(31)](34) Payback score means[,] a numeric value derived from the review of an application, calculated as prescribed by the department, that may include, but shall not be limited to, an estimated simple payback or life-cycle costing method of economic analysis and used for purposes of ranking applications for the selection of loan and financial assistance recipients within the balance of program funds available.

[(32)](35) Predicted baselines means[,] estimated annual energy costs of a proposed energy-using system which incorporates acceptable minimum efficiency.

[(33)](36) Project cost means[,] all costs determined by the department to be directly related to the implementation of an energy conservation project, including initial installation in a new building, that shall include the incremental cost of higher-efficiency energy-using systems or renewable energy options either of which may be compared to a predicted baseline of energy consumption.

[(34)](37) Project revision means[,] any change in an approved ECM that the department determines materially alters the specification from a Technical Assistance Report or Technical Assistance Report equivalent **filed with the applicant's original application to the department.**

[(35)](38) Repayment period means, unless otherwise negotiated as required under section 640.660, RSMo, the period in years required to repay a loan or financial assistance as determined by the project's estimated simple payback or life-cycle costing analysis, and rounded

to the next year where the estimated simple payback or life-cycle costing analysis is a fraction of a year.

(39) Residential unit means a freestanding, single-family home that serves as a primary place of residence or a unit in a multi-unit building providing complete, permanent provisions for living and sleeping that serves as a primary place of residence for the occupants.

(40) School is defined in section 640.651, RSMo.

[(36)](41) Technical Assistance Report (or TAR) means[,/] a specialized engineering report, subject to approval by the department, that identifies and specifies the quantity of energy savings and related energy cost savings that are likely to result from the implementation of one **(1)** or more energy conservation or renewable energy measures.

[(37)](42) Technical Assistance Report equivalent (or TAR equivalent) means[,/] an abbreviated Technical Assistance Report, subject to approval by the department, to identify measures that have been proven cost-effective over time and do not require a more comprehensive analysis.

[(38)](43) Unobligated balance[,/] means that amount in the fund that has not been dedicated to any projects at the end of each state fiscal year.

AUTHORITY: sections 640.651–640.686, RSMo 2000 and RSMo Supp. [1997] 2009. Original rule filed April 2, 1988, effective Sept. 1, 1988. For intervening history, please consult the *Code of State Regulations*. Emergency amendment filed Sept. 30, 2010, effective Oct. 10, 2010, expires April 7, 2011. Amended: Filed Oct. 1, 2010.

PUBLIC COST: This proposed amendment will not cost state agencies or public 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 Natural Resources, Division of Energy, PO Box 176, Jefferson City, MO 65102 or bernard.thompson@dnr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 140—Division of Energy
Chapter 2—Energy Set-Aside Fund**

PROPOSED AMENDMENT

10 CSR 140-2.020 General Provisions. The division is amending the purpose, subsections (1)(A), (4)(A), (4)(C), (5)(A), (6)(C), and (6)(D), and sections (2) and (11). The division is also deleting subsection (5)(D).

PURPOSE: This amendment addresses and expands the scope of energy-using sectors and entities to which loans may be offered in loan cycles as designated and announced by the department, provides additional detail as to the method the department will utilize to administer the Energy Set-Aside Fund, reflects statutory revisions, or clarifies rules as needed.

PURPOSE: This rule [establishes the authority of the depart-

ment to administer] describes the method that will be utilized for administering the Energy Set-Aside Fund.

(1) Eligibility.

(A) Energy-using sectors or entities[, *authorized by administrative rules under 10 CSR 140-2.030*] as defined in **10 CSR 140-2.010** and as designated and announced by the department in accord with **10 CSR 140-2.020(2)** are eligible to submit an application for loan funds or financial assistance to implement an energy project pursuant to section 640.651(1), RSMo, providing the following criteria are met by the applicant:

1. The applicant's proposed project must be located within the borders of Missouri;

2. The applicant must own and operate the building, facility, or system associated with the proposed project unless otherwise agreed to by the department;

3. The building, facility, or system[,/] proposed to receive Energy Conservation Measures (ECMs)[,/] must have a useful life and an expected operational life greater than the loan repayment period as determined by the department;

4. The applicant must not be in default or have a pending event of default; *[and]*

5. The applicant must have no outstanding or known unresolved actions for violations of applicable federal, state, or local laws, ordinances, and rules[.]; **and**

6. The applicant must not be an electric or natural gas utility.

(2) Application Cycle(s) Information. Application cycle(s) information including cycle opening and closing dates, **information designating eligible applicant sectors for each application cycle**, allocation [*amounts*] of total dollars available for loans in each **designated applicant sector**, and interest rates will be published periodically [*as appropriate*] by the department in the "In Addition" section of the *Missouri Register* and through other **public information methods**. Information relating to selection criteria and other relevant information or guidance is available by contacting the Division of Energy's Energy Set-Aside Fund, Program Clerk, *P./O./* Box 176, Jefferson City, MO 65102.

(4) Application.

(A) Application for loan funds may be submitted for the purpose of implementing an energy conservation project. A Technical Assistance Report (TAR) signed and sealed by a Missouri [*licensed*] registered professional engineer or a TAR equivalent must accompany the application or be on file with the department. The application and TAR or TAR equivalent shall be in a form required by the department which the department may revise from time-to-time. A copy of the application form and TAR or TAR equivalent format may be obtained from the Division of Energy's Energy Set-Aside Fund, Program Clerk, *P./O./* Box 176, Jefferson City, MO 65102.

(C) The department may request additional information as needed to determine the feasibility of the project, **the projected energy savings from the project**, and the financial risk of the proposed loan transaction. All applications for loans shall be approved or disapproved within ninety (90) days of receipt of application by the department's Division of Energy or within ninety (90) days of the application cycle in the event of a competitive cycle or stand approved as submitted; provided that only complete applications, as determined by the department in its sole discretion, shall be deemed received by the department[,/] and eligible for loans. Applications which are not on the approved form or which do not provide all information required will be considered incomplete and may be rejected.

(5) ECM Eligibility.

(A) All ECMs for which financial assistance is being sought must be identified in a TAR or TAR equivalent.

1. A project comprised of one (1) or more ECMs must have a

payback score, as determined by the department, of at least six (6) months and no more than *[eight (8) years]* **ten (10) years or eighty percent (80%) of the expected useful life of the ECMs when the expected useful life exceeds ten (10) years. The expected useful life shall not exceed twenty (20) years.** At the department's discretion, an energy conservation loan may be approved that couples an energy conservation project with an applicant's capital improvement project provided the loan amount from the department *[does not exceed eight (8) times the estimated energy savings indicated in the TAR or TAR equivalent]* **complies with the limitations described earlier in this paragraph.**

2. The department may determine that an applicant with any portion of an ECM completed, purchased, in progress, or initiated in any manner prior to loan award is ineligible to receive loan funds for that ECM. Eligible project costs are limited to those specified in the loan agreement or associated documents.

3. The **expected** useful life of a proposed ECM must exceed the ECM's estimated simple payback.

[(D) The department shall determine whether a proposed ECM is eligible to receive funding in compliance with Chapter 621, RSMo.]

(6) Selection.

(C) In the event there is competition for funds, eligible applications shall be given a payback score for selection for funding using criteria set forth in the application cycle notification **and in compliance with section 640.653, RSMo.**

(D) The ECM costs and energy savings shall be computed using engineering **and calculation** methods prescribed by the department.

(11) Remedies to Default. The department director may seek remedies to default or event of default available under section/s/ 640.660.4, *[and]* 640.660.5, **or 640.672, RSMo**, and may exercise any right under law for a remedy to default.

AUTHORITY: sections 640.651–640.686, RSMo 2000 and RSMo Supp. [1997] 2009. Original rule filed July 6, 1998, effective Feb. 28, 1999. Emergency amendment filed Sept. 30, 2010, effective Oct. 10, 2010, expires April 7, 2011. Amended: Filed Oct. 1, 2010.

PUBLIC COST: This proposed amendment will cost state agencies or public subdivisions eight hundred sixty-eight thousand, one hundred and sixteen dollars and twenty-four cents (\$868,116.24) 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 Natural Resources, Division of Energy, PO Box 176, Jefferson City, MO 65102 or bernard.thompson@dnr.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.*

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

Rule Number and Name:	10 CSR 140-2.020 General Provisions
Type of Rulemaking:	Rule Amendment

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate (March 2011-March 2012)
Department of Natural Resources	\$713,793.92
Department of Agriculture	\$ 42,500.00
Missouri Agricultural and Small Business Development Authority	\$157,500.00

III. Worksheet

Department of Natural Resources (1.0 FTE)	
PS Salary Costs & Fringe Benefit (53.09%) Administrative Office Support Assistant	\$ 47,727.00
DNR Expense	\$ 12,990.00
Indirect Rate (38.12%)	\$ 23,145.32
DNR Contract Costs – Shaw	\$ 629,931.60
DNR Total	\$ 713,793.92
Department of Agriculture	
PS Salary Costs & Fringe Benefit (47.48%)	\$ 35,313.00
Indirect Rate (20.36%)	\$ 7,187.00
MDA Total (prorated)	\$ 28,322.32
Missouri Agricultural and Small Business Development Authority (MASBDA)	
PS Salary Costs & Fringe Benefit (41.78%)	\$128,697.96
Indirect Rate (20.36%)	\$ 26,202.90
Expenses	\$ 2,599.14
MASBDA Total (prorated)	\$126,000.00
Total Annual Cost (March 2011-March 2012)	\$868,116.24

IV. Assumptions

This rule amendment expands the scope of borrowers who will be eligible for loans from the Energy Set-Aside Fund (ESA Fund), an existing revolving loan fund administered by the Division of Energy, Department of Natural Resources. The ESA Fund has been designated by the department, with approval of the U.S. Department of Energy, for administration of \$4.5 million of State Energy Plan funds under the American Recovery and Reinvestment Act of 2009 (ARRA) which will significantly increase the size of the ESA Fund, and will result in additional costs to administer the revolving loan fund through March 2012. During this period, the initial loan cycles will be conducted under the department's agreements with Shaw Infrastructure & Environmental and the Missouri Department of Agriculture (MDA) and the Missouri Agricultural and Small Business Development Authority (MASBDA). All costs related to these initial loan cycles will also be paid from ARRA funds (for Shaw and MDA) and from loan interest proceeds (MASBDA). The department's agreement with MDA and MASBDA ends in March 2012, which coincides with the end of the first year this rule will be in effect. The public entity fiscal impact is shown for March 2011-March 2012. In subsequent years, the public entity fiscal impact is estimated to include costs to the Department of Natural Resources of one FTE at an annualized aggregate cost of \$83,862 to administer the revolving loan fund in current year dollar values.

Loans issued in subsequent loan cycles will be funded from the repayment of the initial cycle loans, and any increased costs to the department to administer these funds, either internally or via contracted services, should be covered by interest or fees on those subsequent loan cycles.

The \$4.5 million loan fund is not included as a cost in the public entity fiscal impact.

March 2011-March 2012

Shaw Estimate:

Total SEP Ag Budget applicable to Shaw	\$5,000,000.00
Total Shaw Ag Budget - 20 months duration	\$1,166,540.00
% of Ag Budget applicable to loans	90%
Shaw Budget applicable to loans (\$1,166,540.00 x 90%)	\$1,049,886.00
Shaw Budget per month (\$1,049,886.00 ÷ 20 months)	\$52,494.30
Shaw Budget applicable to Fiscal Note (\$52,494.30 x 12)	\$629,931.60

Dept. of Agriculture Estimate:

Total Ag Budget	\$42,500.00
Total Ag Budget duration (work begins 10/2010)	18 months
Ag Budget per month (\$42,500.00 ÷ 18)	\$2,361.11
Ag Budget applicable to Fiscal Note (\$2,361.11 x 12)	\$28,333.32

MASBDA Estimate:

Total MASBDA Budget	\$157,500.00
Total MASBDA Budget duration (work begins 1/2011)	15 months
MASBDA Budget per month (\$157,500 ÷ 15)	\$10,500.00
MASBDA Budget applicable to Fiscal Note (\$10,500 x 12)	\$126,000.00

There will be no cost to any other public entity.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 140—Division of Energy
Chapter 2—Energy Set-Aside Fund

PROPOSED RESCISSION

10 CSR 140-2.030 Public Sector Eligibility. This rule limited eligibility to apply for Energy Set-Aside Fund loans to certain public sector institutions.

PURPOSE: This rule is being rescinded because the scope of eligible energy-using sectors is being addressed in other sections of the Energy Set-Aside Fund rule (10 CSR 140-2.020).

AUTHORITY: sections 640.651–640.686, RSMo Supp. 1997. Original rule filed July 6, 1998, effective Feb. 28, 1999. Emergency rescission filed Sept. 30, 2010, effective Oct. 10, 2010, expires April 7, 2011. Rescinded: Filed Oct. 1, 2010.

PUBLIC COST: This proposed rescission will not cost state agencies or public 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 Natural Resources, Division of Energy, PO Box 176, Jefferson City, MO 65102 or bernard.thompson@dnr.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 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 44—Miscellaneous Fees and Taxes

PROPOSED RULE

12 CSR 10-44.100 Excess Traffic Violation Revenue

PURPOSE: Section 302.341, RSMo, provides for cities, towns, and villages to remit to the Department of Revenue any amount from fines and court costs for traffic violations occurring on state highways that are in excess of thirty-five percent (35%) of its total annual general operating budget. This rule explains the procedure for remitting the excess amount to the department.

(1) In general, any city, town, or village that receives more than thirty-five percent (35%) of its general operating revenue from fines and court costs for traffic violations occurring on state highways must submit the amount in excess of the thirty-five percent (35%) to the Department of Revenue.

(2) Basic Application of Rule.

(A) At the end of each city, town, or village's fiscal year, the city, town, or village must calculate the percent of its general operating revenue that is derived from traffic fines and court costs for traffic violations that occur on state highways.

(B) If the city, town, or village determines that more than thirty-five percent (35%) of its general operating revenues are derived from traffic fines and court costs for traffic violations on state highways, the excess amount must be remitted to the department.

(C) Payment to the department should occur by the last day of the second month immediately following the end of the city, town, or village's fiscal year. The city, town, or village must clearly mark the

payment as "Excess Traffic Fees."

(D) If the city, town, or village determines it has not derived more than thirty-five percent (35%) of its general operating revenues from traffic fines and court costs for traffic violations on state highways, it does not need to report that fact to the department.

AUTHORITY: section 302.341.2, RSMo Supp. 2009. Original rule filed Sept. 27, 2010.

PUBLIC COST: This proposed rule is estimated to cost state agencies or political subdivisions forty-six thousand seven hundred twenty-seven dollars (\$46,727) annually.

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 Revenue, Legal Services Division, PO Box 475, Jefferson City, MO 65105-0475. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**FISCAL NOTE
PUBLIC COST**

I. RULE NUMBER

Rule Number and Name:	12 CSR 10-44.100 Excess Traffic Violation Revenue
Type of Rulemaking:	Proposed Rule

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimate Cost of Compliance Annually
Cities, Towns, and Villages	\$46,727

If a city, town, or village receives more than thirty-five percent of its general operating revenue from fines and court costs for traffic violations occurring on state highways, they must submit the amount in excess of the thirty-five percent to the Department of Revenue. Since the enactment of Section 302.341, RSMo, no city, town, or village has reported excess dollars collected to the Department of Revenue.

Recently, the Missouri State Auditor completed an audit on the city of Randolph, and determined they were in violation of Section 302.341, RSMo. Based on the audit, it was estimated the city should remit between \$39,575 and \$53,878 to the Department of Revenue. For FY2011, the Department of Revenue estimates \$46,727 will be remitted to the Department of Revenue.

Based on discussions with the Missouri Municipal League, only very small towns and villages would ever be impacted by this statutory requirement. The towns or villages that could be affected would have very low property tax revenues, very low sales tax revenues, and would most likely be situated on a major highway. Additionally, as cities and towns are not required to annually report their budget or their traffic violation collection totals to Department of Revenue or any other governing entity, it is expected that cities that have exceeded the collection limit will only be discovered through audits or through some other legal action.

III. ASSUMPTIONS

The Department averaged the two totals determined by the Missouri State Auditor and assumes this will generally be the amount owed by any affected city, town, or village. The Department assumes no more than one or two cities will remit payments per year. The Department assumes the cost to process one or two payments per year will be less than \$1.

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

PROPOSED AMENDMENT

13 CSR 40-2.370 Requirement that All [Applicants/Recipients for the Payment of Temporary Assistance Shall Complete an Assessment and May Be Required To Complete an Individual Employment Plan. The Family Support Division is amending sections (1) and (2), deleting sections (4) and (6), and renumbering and amending section (5).

PURPOSE: This amendment deletes the requirement of the Individual Employment Plan (IEP) being developed prior to approval of the application. This amendment removes references to the Division of Workforce Development and replaces with contracted service provider. This amendment also removes the requirement of the Family Support Division to coordinate programs with the Departments of Health and Senior Services, Mental Health, Elementary and Secondary Education, Labor and Industrial Relations, and Economic Development for use with an Individual's Employment Plan (IEP).

(1) Initial Assessment.

(A) For the purpose of the administration of the Temporary Assistance Program, the Family Support Division shall make an initial assessment of the skills, prior work experience, and employability of each applicant/recipient of assistance under the program who is the head of household or second parent and—

1. Has attained eighteen (18) years of age; or
2. Has not completed high school or obtained a certificate of high school equivalency[,] and is not attending secondary school.

(C) On the basis of the assessment made under subsection (1)(A) with respect to an individual, the Family Support Division shall refer the [applicant] recipient to the [Division of Workforce Development (DWD)] contracted service provider or its designee to negotiate an Individual Employment Plan (IEP) with the individual, unless the person meets an exclusion or exemption under 13 CSR 40-2.315(2)(C) and 13 CSR 40-2.315(2)(D).

[(D) The IEP must be developed prior to approval of the application.]

(2) Individual Employment Plan.

(A) The [Division of Workforce Development] contracted service provider or its designee shall develop with the individual an IEP which:/—

1. Sets forth an employment goal for the individual and a plan for moving the individual into employment as soon as possible and will include a requirement that the individual participate in an allowable/countable work activity for the minimum required hours outlined in [the state policy] 13 CSR 40-2.315;
2. To the greatest extent possible is designed to move the individual into whatever employment the individual is capable of handling as quickly as possible by establishing short- and long-term educational/occupational goals;
3. Assesses the individual's barriers that may hinder the individual's ability to seek and/or obtain employment. Those barriers may include (but are not limited to): substance abuse, legal issues, child care, healthcare, transportation, and education;
4. Identify available support services, such as subsidized child care, medical services, and transportation benefits, to help ensure that the family will become self-sustaining and will be less likely to return to public assistance;
5. Address circumstances creating barriers to self-sufficiency and may be updated and adjusted to identify and address the removal of these barriers; and
6. Ascertain the skills of the individual that will expand the individual's opportunity to obtain employment.

[(4) The application for Temporary Assistance benefits will not be approved without verification that the applicant completed the IEP, unless good cause is established.]

[(5)](4) If an individual in a family fails to cooperate in developing, or fails to comply with the requirements of, the IEP without good cause as defined in 13 CSR 40-2.315, the division shall [reject the Temporary Assistance application] sanction the individual as provided in 13 CSR 40-2.315.

[(A) Good cause for not complying with the development of an IEP are—

1. Court-required appearance or incarceration;
2. Emergency family crisis which renders participation unreasonable;
3. Breakdown in transportation arrangements with no readily accessible alternate means of transportation;
4. Breakdown in the child care arrangement or availability of child care not suited for special needs of the child for whom it is intended;
5. Lack of identified social services necessary for participation and set forth in the IEP referenced in this rule; or
6. DWD is not able to provide services within thirty (30) days.]

[(6) The Family Support Division shall make efforts to coordinate with the Departments of Health and Senior Services, Mental Health, Elementary and Secondary Education, Labor and Industrial Relations, and Economic Development to develop or make available existing programs to individuals with an IEP]

AUTHORITY: section[s] 207.020, RSMo 2000 and section 208.040.5, RSMo Supp. [2006] 2009. Emergency rule filed Feb. 18, 1998, effective March 1, 1998, terminated Aug. 10, 1998. Original rule filed Jan. 16, 1998, effective Aug. 1, 1998. Amended: Filed June 1, 2007, effective Dec. 30, 2007. Amended: Filed Sept. 21, 2010.

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

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

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

**Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—MO HealthNet Division
Chapter 15—Hospital Program**

PROPOSED AMENDMENT

13 CSR 70-15.160 Prospective Outpatient Hospital Services Reimbursement Methodology. The division is amending section (1).

PURPOSE: This amendment provides for a change in MO HealthNet reimbursement of Medicare Part B and Medicare Advantage/Part C outpatient hospital crossover claims, except claims submitted by public hospitals operated by the Department of Mental Health, effective for payment dates beginning October 1, 2010, with dates of service on or after January 1, 2010.

(1) Prospective Outpatient Hospital Services Reimbursement Percentage for Hospitals Located Within Missouri.

(C) Outpatient Hospital Services Reimbursement Limited by Rule.

1. Effective for dates of service September 1, 1985, and annually updated, certain clinical diagnostic laboratory procedures will be reimbursed from a Medicaid fee schedule which shall not exceed a national fee limitation.

2. Services of hospital-based physicians and certified registered nurse anesthetists shall be billed on a/n HCFA/CMS-1500 professional claim form [which is incorporated by reference as part of this rule,] and reimbursed from a Medicaid fee schedule or the billed charge, if less. The CMS-1500 professional claim form is incorporated by reference and made a part of this rule as published by the Department of Social Services, MO HealthNet Division, 615 Howerton Court, Jefferson City, MO 65109, at its website at www.dss.mo.gov/mhd, November 1, 2010. This rule does not incorporate any subsequent amendments or additions.

3. Outpatient hospital services provided for those recipients having available Medicare benefits shall be reimbursed by Medicaid to the extent of the deductible and coinsurance as imposed under Title XVIII.

4. Effective for payment dates beginning October 1, 2010, reimbursement of Medicare/Medicaid crossover claims (crossover claims) for Medicare Part B and Medicare Advantage/Part C outpatient hospital services with dates of service on or after January 1, 2010, except for public hospitals operated by the Department of Mental Health (DMH), shall be determined as follows:

A. Crossover claims for Medicare Part B outpatient hospital services in which Medicare was the primary payer and the MO HealthNet Division (MHD) is the payer of last resort for cost-sharing (i.e., coinsurance, copay, and/or deductibles) must meet the following criteria to be eligible for MHD reimbursement:

(I) The crossover claim must be related to Medicare Part B outpatient hospital services that were provided to MO HealthNet participants also having Medicare Part B coverage; and

(II) The crossover claim must contain approved outpatient hospital services which MHD is billed for cost-sharing; and

(III) The Other Payer paid amount field on the claim must contain the actual amount paid by Medicare. The MO HealthNet provider is responsible for accurate and valid reporting of crossover claims submitted to MHD for payment regardless of how the claim is submitted. Providers submitting crossover claims for Medicare Part B outpatient hospital services to MHD must be able to provide documentation that supports the information on the claim upon request. The documentation must match the information on the Medicare Part B plan's remittance advice. Any amounts paid by MHD that are determined to be based on inaccurate data will be subject to recoupment;

B. Crossover claims for Medicare Advantage/Part C (Medicare Advantage) outpatient hospital services in which a Medicare Advantage plan was the primary payer and MHD is the payer of last resort for cost-sharing (i.e., coinsurance, copay, and/or deductibles) must meet the following criteria to be eligible for MHD reimbursement:

(I) The crossover claim must be related to Medicare Advantage outpatient hospital services that were provided to MO HealthNet participants who also are either a Qualified Medicare Beneficiary (QMB Only) or Qualified Medicare Beneficiary Plus (QMB Plus); and

(II) The crossover claim must be submitted as a Medicare UB-04 Part C Professional Crossover claim through the MHD online Internet billing system; and

(III) The crossover claim must contain approved outpatient hospital services which MHD is billed for cost-sharing; and

(IV) The Other Payer paid amount field on the claim must contain the actual amount paid by the Medicare Advantage

plan. The MO HealthNet provider is responsible for accurate and valid reporting of crossover claims submitted to MHD for payment. Providers submitting crossover claims for Medicare Advantage outpatient hospital services to MHD must be able to provide documentation that supports the information on the claim upon request. The documentation must match the information on the Medicare Advantage plan's remittance advice. Any amounts paid by MHD that are determined to be based on inaccurate data will be subject to recoupment;

C. MHD reimbursement for approved outpatient hospital services. MHD will reimburse seventy-five percent (75%) of the allowable cost-sharing amount; and

D. MHD will continue to reimburse one hundred percent (100%) of the allowable cost-sharing amounts for outpatient services provided by public hospitals operated by DMH as set forth above in paragraph (1)(C)3.

AUTHORITY: section 208.010, SB 1007, Second Regular Session, Ninety-fifth General Assembly, 2010 and sections 208.152, 208.153, [208.162 and] 208.201, [RSMo 2000] and 208.471, RSMo Supp. [2004] 2009. Emergency rule filed June 20, 2002, effective July 1, 2002, expired Feb. 27, 2003. Original rule filed June 14, 2002, effective Jan. 30, 2003. For intervening history, please consult the Code of State Regulations. Emergency amendment filed Sept. 21, 2010, effective Oct. 1, 2010, expires March 29, 2011. Amended: Filed Sept. 30, 2010.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate for SFY 2011. However, there is an estimated cost savings of eleven million two hundred thousand dollars (\$11.2 million) in SFY 2011 and fourteen million nine hundred thousand dollars (\$14.9 million) annually thereafter.

PRIVATE COST: The estimated cost to hospitals, excluding public hospitals operated by the Department of Mental Health, is eleven million two hundred thousand dollars (\$11.2 million) in SFY 2011 and fourteen million nine hundred thousand dollars (\$14.9 million) annually thereafter. The MO HealthNet Division expects a portion of the cost to the hospitals for nonpayment of the cost-sharing amount for Medicare Part B to be recovered through Medicare's bad debt reimbursement policies as set forth in 42 CFR section 413.89 and the Medicare Provider Reimbursement Manual. Allowable bad debt for critical access hospitals is eligible to be reimbursed at one hundred percent (100%), and all other hospitals are eligible to be reimbursed at seventy percent (70%). Bad debts associated with services paid under a reasonable charge-based methodology (such as ambulance services) or a fee schedule (such as therapies or lab) are not reimbursable. The bad debts associated with nonpayment of the cost-sharing amount for Medicare Part C are not eligible for reimbursement from Medicare; however, the Medicare Part C crossover claims only represent eleven ten-thousandths percent (0.0011%) of the total outpatient hospital crossover claims or approximately seven hundred fifty-eight dollars (\$758).

Hospitals will be responsible for properly reporting the allowable bad debt relating to the cost-sharing amount for Medicare Part B not paid by the MO HealthNet Division on their Medicare cost report to receive Medicare reimbursement. If they do not properly report the allowable bad debt on the Medicare cost report, the hospitals may not receive reimbursement from Medicare. During the initial year of implementation, hospitals may experience a delay of approximately eighteen (18) months in receiving the reimbursement from Medicare for the allowable bad debt, depending on cost reporting deadlines and the facility's fiscal year end. After the initial implementation period, the increased cost of the bad debts will be reflected in the Medicare Administrative Contractor bi-weekly interim payments for allowable Medicare bad debts in accordance with the Medicare

Provider Reimbursement Manual section 2405.2 and 42 CFR section 412.116.

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

**FISCAL NOTE
 PUBLIC COST**

- I. Department Title:** Title 13 - Department of Social Services
Division Title: Division 70 - MO HealthNet Division
Chapter Title: Chapter 15 – Hospital Program

Rule Number and Name:	13 CSR 70-15.160 Prospective Outpatient Hospital Services Reimbursement Methodology
Type of Rulemaking:	Proposed Amendment

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Department of Social Services, MO HealthNet Division	Estimated cost savings for SFY 11 = \$11.2 million Estimated cost savings annually thereafter = \$14.9 million.

III. WORKSHEET

Cost Savings for SFY 11:

Annual Estimated Cost Savings	\$14,950,112
Divided by 12 to Determine Monthly Amount	<u>12</u>
Monthly Estimated Cost Savings	\$ 1,245,843
Multiplied by 9 Months of savings in SFY 11	<u>9</u>
SFY 11 Estimated Cost Savings	\$ 11,212,587

Cost Savings for SFY 12 forward:

Annual Estimated Cost Savings	\$14,950,112
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IV. ASSUMPTIONS

The annual estimated cost savings was based on an analysis of the outpatient Part B crossover claims paid during calendar year 2009 applying the methodology set forth in the proposed regulation.

**FISCAL NOTE
PRIVATE COST**

- I. Department Title:** Department of Social Services
Division Title: Division 70 - MO HealthNet Division
Chapter Title: Chapter 15 – Hospital Program

Rule Number and Title:	13 CSR 70-15.160 Prospective Outpatient Hospital Services Reimbursement Methodology
Type of Rulemaking:	Proposed Amendment

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
143	Hospitals enrolled in MO HealthNet, except public hospitals operated by the Department of Mental Health (DMH)	Estimated cost for SFY 11 = \$11.2 million. However, a portion is expected to be recovered through Medicare reimbursement during SFY 12 – SFY 13. The estimated cost annually thereafter = \$14.9 million. However, a portion is expected to be recovered through Medicare reimbursement. See assumptions below.

III. WORKSHEET

Number of Entities:

Total hospitals enrolled in MO HealthNet	151
Less public hospitals operated by DMH	<u>8</u>
Hospitals impacted by this proposed rule	143

Cost for SFY 11:

Annual Estimated Cost Savings	\$14,950,112
Divided by 12 to Determine Monthly Amount	<u>12</u>
Monthly Estimated Cost Savings	\$ 1,245,843
Multiplied by 9 Months of savings in SFY 11	<u>9</u>
SFY 11 Estimated Cost Savings	\$ 11,212,587

Cost for SFY 12 forward:

Annual Estimated Cost Savings \$14,950,112

IV. ASSUMPTIONS

The MO HealthNet Division expects a portion of the cost to the hospitals for nonpayment of the cost sharing amount for Medicare Part B to be recovered through Medicare's bad debt reimbursement policies as set forth in 42 CFR §413.89 and the Medicare Provider Reimbursement Manual. Allowable bad debt for critical access hospitals is eligible to be reimbursed at one hundred percent (100%) and all other hospitals are eligible to be reimbursed at seventy percent (70%). Bad debts associated with services paid under a reasonable charge-based methodology (such as ambulance services) or a fee schedule (such as therapies or lab) are not reimbursable. The bad debts associated with nonpayment of the cost sharing amount for Medicare Part C are not eligible for reimbursement from Medicare; however, the Medicare Part C crossover claims only represent eleven ten-thousandths percent (0.0011%) of the total outpatient hospital crossover claims or approximately seven hundred and fifty eight dollars (\$758).

The annual estimated cost was based on an analysis of the outpatient Part B hospital crossover claims paid during calendar year 2009 applying the methodology set forth in the proposed regulation.

Hospitals will be responsible for properly reporting the allowable bad debt relating to the cost sharing amount for Medicare Part B not paid by the MO HealthNet Division on their Medicare cost report to receive Medicare reimbursement. If they do not properly report the allowable bad debt on the Medicare cost report, the hospitals may not receive reimbursement from Medicare. During the initial year of implementation, hospitals may experience a delay of approximately eighteen (18) months in receiving the reimbursement from Medicare for the allowable bad debt, depending on cost reporting deadlines and the facility's fiscal year end. After the initial implementation period, the increased cost of the bad debts will be reflected in the Medicare Administrative Contractor bi-weekly interim payments for allowable Medicare bad debts in accordance with the Medicare Provider Reimbursement Manual Section §2405.2 and 42 CFR §412.116.

The indirect cost associated with compliance is estimated to be minimal. This change falls within the normal scope of Medicare reporting and therefore, no additional staff would be needed.

**Title 19—DEPARTMENT OF HEALTH AND
SENIOR SERVICES
Division 60—Missouri Health Facilities Review
Committee
Chapter 50—Certificate of Need Program**

PROPOSED AMENDMENT

19 CSR 60-50.200 Purpose and Structure. The committee proposes to amend section (2).

PURPOSE: This rule is amended because clarification is needed about the goals of the Certificate of Need Program.

(2) The purpose of the CON statute is to achieve the highest level of health for Missourians through cost containment, reasonable access, and public accountability. The goals are to:—

(D) *[Negotiate]* Evaluate competing interests;

(F) Disseminate health-related information to *[interested and]* affected parties.

AUTHORITY: section 197.320, RSMo 2000. Original rule filed June 2, 1994, effective Nov. 30, 1994. For intervening history, please consult the Code of State Regulations. Amended: Filed Oct. 1, 2010.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Thomas R. Piper, Director, Certificate of Need Program, PO Box 570, Jefferson City, MO 65102 or email to tom.piper@dhs.mo.gov. To be considered, comments must be received by December 1, 2010. A public hearing has been scheduled for December 1, 2010, at 10:00 a.m., located in the Knipp Training Room, 3418 Knipp Drive, Jefferson City, Missouri.

**Title 19—DEPARTMENT OF HEALTH AND
SENIOR SERVICES
Division 60—Missouri Health Facilities Review
Committee
Chapter 50—Certificate of Need Program**

PROPOSED AMENDMENT

19 CSR 60-50.300 Definitions for the Certificate of Need Process. The committee proposes to amend sections (5), (9), and (18), delete section (11), amend and renumber section (12), and add a new section (12).

PURPOSE: This rule is amended because the Certificate of Need Program office was moved to a new physical location, archaic language needs to be eliminated, a definition needs to be clarified, and a definition needs to be added to streamline the review process.

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

(5) Expedited application means a shorter than full application and review period as defined in 19 CSR 60-50.420 and 19 CSR 60-50.430 for any long-term care expansion or replacement as defined in section 197.318.8.-10., **RSMo**, long-term care renovation and modernization, or the replacement of any major medical equipment as defined in section (11) of this rule which holds a Certificate of Need (CON) previously granted by the Missouri Health Facilities Review Committee (committee). Applications for replacement of major medical equipment not previously approved by the committee *[should]* **shall** apply for a full review.

(9) Health care facility expenditure includes the capital value of new construction or renovation costs, architectural/engineering fees, equipment not in the construction contract, land acquisition costs, consultants'/legal fees, interest during construction, predevelopment costs as defined in section 197.305(13), **RSMo**, in excess of one hundred fifty thousand dollars (\$150,000), any existing land and building converted to medical use for the first time, and any other capitalizable costs incurred over a twelve (12)-month period as listed on the "Proposed Project Budget" *[form]* (**Form MO 580-1863, incorporated by reference**).

[(11) Interested party means any licensed health care provider or other affected person who has expressed an interest in the Certificate of Need (CON) process or a CON application.]

*[(12)](11) Major medical equipment means any piece of equipment and collection of functionally related devices acquired to operate the equipment and additional related costs such as software, shielding, and installation, acquired over a twelve (12)-month period with an aggregate cost of one (1) million dollars *[(\$1,000,000)]* or more, when the equipment is intended to provide the following **diagnostic or treatment services and related variations, including, but not limited to:***

*(A) Cardiac *[C]* catheterization;*

*(B) *[CT]* *[I]* Computed *[T]* tomography*[[]]*;*

*(C) Gamma *[K]* knife;*

[[D)] Hemodialysis;]

[[E)](D) Lithotripsy;

*[[F)](E) *[MRI]* *[I]* Magnetic *[R]* resonance *[I]* imaging*[[]]*;*

*[[G)] PET *(Positron Emission Tomography)*];]*

*[[H)](F) Linear *[A]* accelerator;*

[[I)] Open Heart Surgery;]

*[[J)] EBCT *(Electron Beam Computed Tomography)*];]*

*[[K)](G) *[PET/CT]* *[I]* Positron *[E]* emission *[T]* tomography*[[C)]* computed *[T]* tomography*[[]]*; or*

*[[L)](H) Evolving *[T]* technology;*

(12) **Non-Applicability review** means a Letter of Intent process to document that a CON is not needed for a proposal when the capital expenditure is less than the minimums in section 197.305(6), **RSMo**; the proposal is to increase the number of beds by ten (10) or more than ten percent (10%) of total bed capacity, whichever is less, over a two (2)-year period; an expansion or replacement is proposed consistent with the provisions of section 197.318, **RSMo**; an exemption or exception is found in accordance with section 197.312, **RSMo**, or section 197.314(1), **RSMo**; or the proposal meets the definition of a non-substantive project.

(18) The *[most current version of Form MO 580-1863]* following form cited in this rule is incorporated by reference and published by the Certificate of Need Program (CONP), October 1, 2009, and may be downloaded from <http://www.dhss.mo.gov/CON/Forms.html>, obtained by mailing a written request with a self-addressed stamped envelope to *[the Certificate of Need Program *(CONP)*]*, PO Box 570, Jefferson City, MO 65102-0570, or acquired in person at the CONP Office,

[or, if technically feasible, by downloading a copy of the form from the CONP website at: www.dhss.mo.gov/con.] **3418 Knipp Drive, Jefferson City, Missouri, (573) 751-6403. This rule does not include any later amendments or additions.**

(A) Proposed Project Budget (MO 580-1863)

AUTHORITY: section 197.320, RSMo 2000. Original rule filed June 2, 1994, effective Nov. 30, 1994. For intervening history, please consult the Code of State Regulations. Amended: Filed Oct. 1, 2010.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Thomas R. Piper, Director, Certificate of Need Program, PO Box 570, Jefferson City, MO 65102 or email to tom.piper@dhss.mo.gov. To be considered, comments must be received by December 1, 2010. A public hearing has been scheduled for December 1, 2010, at 10:00 a.m., located in the Knipp Training Room, 3418 Knipp Drive, Jefferson City, Missouri.

**Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 60—Missouri Health Facilities Review Committee
Chapter 50—Certificate of Need Program**

PROPOSED AMENDMENT

19 CSR 60-50.400 Letter of Intent Process. The committee proposes to amend sections (1) and (3), make new sections (4) and (5) out of part of section (3), delete section (5), and amend and renumber sections (4), (6), and (7).

PURPOSE: This rule is amended because the Certificate of Need Program office was moved to a new physical location, and the review process needs to be streamlined by reducing applications and expanding electronic submission opportunities, as well as adding forms by reference.

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

(1) Applicants shall submit by mail, fax, or email a Letter of Intent (LOI) [package] to begin the Certificate of Need (CON) review process at least thirty (30) days prior to the submission of the CON application and will remain valid in accordance with the following time frames:

(A) For full reviews, expedited equipment replacements, expedited long-term care (LTC) renovation or modernization reviews, and expedited LTC facility replacement reviews, an LOI is valid for six (6) months; and

(B) For expedited LTC bed expansion reviews in accordance with section 197.318.8, RSMo, an LOI is valid for twenty-four (24) months; and]

[(C) For non-applicability reviews, a LOI is valid for six (6)

months.]

(3) An LTC bed expansion or replacement [as] sought pursuant to sections 197.318.8 through 197.318.10, RSMo, does not require/s/ a CON application, if the capital expenditure for such bed expansion or replacement exceeds six hundred thousand dollars (\$600,000), but allows for shortened information requirements and review time frames] but is subject to non-applicability review.

(4) When an LOI for an LTC bed expansion, except replacement(s), is filed, the Certificate of Need Program (CONP) staff shall immediately request certification for that facility's [of] average licensed bed occupancy and final Class 1 patient care deficiencies for the most recent six (6) consecutive calendar quarters. [by] Such certification shall be obtained by the applicant from the Division of Regulation and Licensure (DRL), Department of Health and Senior Services, through an LTC Facility Expansion Certification (Form MO 580-2351, incorporated by reference) to verify compliance with occupancy and deficiency requirements pursuant to section 197.318.8, RSMo. Occupancy data shall be taken from the DRL's most recently published Six-Quarter Occupancy of Intermediate Care and Skilled Nursing Facility (or Residential Care and Assisted Living Facility) Licensed Beds reports.

(5) For LTC bed expansions or replacements, the sellers and purchasers shall be defined as the owner(s) and operator(s) of the respective facilities, which includes building, land, and license. On the Purchase Agreement (Form MO 580-2352, incorporated by reference), both the owner(s) and operator(s) of the purchasing and selling facilities should sign.

[(4)](6) The CONP staff, as an agent of the Missouri Health Facilities Review Committee (committee), will review LOIs according to the following provisions:

(A) Major medical equipment is reviewed as an expenditure on the basis of cost, regardless of owners or operators, or location (mobile or stationary)].;

(B) The CONP staff shall test the LOI for applicability in accordance with statutory provisions for expenditure minimums, replacements, expansions, exemptions, and exceptions].;

(C) If the test verifies [that] a statutory replacement, exception, or exemption [is met] on a proposed project, or the proposed cost is below all applicable expenditure minimums, the committee [C]chair may issue a Non-Applicability CON letter indicating the application review process is complete; otherwise, the CONP staff shall add the proposal to a list of Non-Applicability proposals to be considered at the next regularly scheduled committee meeting].;

(D) If [an] a replacement, exception, or exemption is not [met] verified, and if the proposal is above any applicable expenditure minimum, then a CON application will be required for the proposed project].;

(E) A Non-Applicability CON letter will be valid subject to the following conditions:

1. Any change in the project scope, including change in type of service, cost, operator, ownership, or site, could void the effectiveness of the letter and require a new review; and

2. Final [audited] project costs with third-party verification must be provided on a Periodic Progress Report (Form MO 580-1871, incorporated by reference)].; and

(F) A CON application must be made if[:—

1. The project involves the development of a new hospital costing one (1) million dollars [(\$1,000,000)] or more, except for a facility licensed under Chapter 197, RSMo, meeting the requirements described in 42 CFR, section 412.23(e);

2. The project involves the acquisition or replacement of major medical equipment in any setting not licensed under Chapter 198, RSMo, costing one (1) million dollars [(\$1,000,000)] or more;

3. The project involves the acquisition or replacement of major medical equipment for a health care facility licensed under Chapter 198, RSMo, costing four hundred thousand dollars (\$400,000) or more;

4. The project involves the acquisition of any equipment or beds in a long-term care hospital meeting the requirements found in 42 CFR section 412.23(e) at any cost;

5. The project involves a capital expenditure for renovation[, or modernization *[or replacement]*, but not additional beds, by or on behalf of an existing health care facility licensed under Chapter 198, RSMo, costing six hundred thousand dollars (\$600,000) or more;

6. The project involves *[either]* additional LTC (licensed or certified residential care facility *[I or III]*, **assisted living facility**, intermediate care facility, or skilled nursing facility) beds *[or LTC bed expansions or replacements]* licensed under Chapter 198, RSMo, *[as defined in section (3) of this rule,]* costing six hundred thousand dollars (\$600,000) or more; or

7. The project involves the expansion of an existing health care facility as described in subdivisions (1) and (2) of section 197.366, RSMo, that either[:]—

A. Costs six hundred thousand dollars (\$600,000) or more; or

B. Exceeds ten (10) beds or ten percent (10%) of that facility's existing licensed capacity, whichever is less.

[(5) For a LTC bed expansion proposal pursuant to section 197.318.8(1)(e), RSMo, the CONP Staff shall request occupancy verification by the DRL who shall also provide a copy to the applicant.]

[(6)](7) Nonsubstantive projects are waived from review by the authority of section 197.330.1(8), RSMo, and any projects seeking such a determination shall submit information through the LOI process; those meeting the nonsubstantive definition shall be posted for review on the CON web site at least twenty (20) days in advance of the committee meeting when they are scheduled to be confirmed by the committee.

*[(7)](8) The **[most current version of Forms MO 580-2351, MO 580-2352, and MO 580-1871]** following forms cited in this rule are incorporated by reference and published by the Certificate of Need Program (CONP), October 1, 2009, and may be downloaded from <http://www.dhss.mo.gov/CON/Forms.html>, obtained by mailing a written request with a self-addressed stamped envelope to *[the]* CONP, PO Box 570, Jefferson City, MO 65102-0570, or acquired in person at the CONP Office, *[or, if technically feasible, by downloading a copy of the forms from the CONP website at www.dhss.mo.gov/con.]* **3418 Knipp Drive, Jefferson City, Missouri, (573) 751-6403. This rule does not include any later amendments or additions.***

(A) LTC Facility Expansion Certification (Form MO 580-2351).

(B) Purchase Agreement (Form MO 580-2352).

(C) Periodic Progress Report (Form MO 580-1871).

AUTHORITY: section 197.320, RSMo 2000. Original rule filed June 2, 1994, effective Nov. 30, 1994. For intervening history, please consult the Code of State Regulations. Amended: Filed Oct. 1, 2010.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition

to this proposed amendment with Thomas R. Piper, Director, Certificate of Need Program, PO Box 570, Jefferson City, MO 65102 or email to tom.piper@dhss.mo.gov. To be considered, comments must be received by December 1, 2010. A public hearing has been scheduled for December 1, 2010, at 10:00 a.m., located in the Knipp Training Room, 3418 Knipp Drive, Jefferson City, Missouri.

**Title 19—DEPARTMENT OF HEALTH AND
SENIOR SERVICES
Division 60—Missouri Health Facilities Review
Committee
Chapter 50—Certificate of Need Program**

PROPOSED AMENDMENT

19 CSR 60-50.410 Letter of Intent Package. The committee proposes to amend sections (1), (2), (5), and (6).

PURPOSE: This rule is amended because the Certificate of Need Program office was moved to a new physical location, and in order to clarify electronic signatures and incorporate forms by reference.

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

(1) The Letter of Intent (LOI) (Form MO 580-1860, **incorporated by reference**) shall be completed as follows:

(2) If a non-applicability review is sought, applicants shall submit the following additional information:

(A) Proposed Expenditures (Form MO 580-2375, **incorporated by reference**) including information which details all methods and assumptions used to estimate project costs;

(5) The LOI must have an original signature for the contact person *[until the Certificate of Need Program (CONP), when technically ready, shall allow for submission of]* including an electronic signature[s].

(6) The **[most current version of Forms MO 580-1860 and MO 580-2375]** following forms cited in this rule are incorporated by reference and published by the Certificate of Need Program (CONP), October 1, 2009, and may be downloaded from <http://www.dhss.mo.gov/CON/Forms.html>, obtained by mailing a written request with a self-addressed stamped envelope to *[the]* CONP, PO Box 570, Jefferson City, MO 65102-0570, or acquired in person at the CONP Office, *[or, if technically feasible, by downloading a copy of the forms from the CONP website at www.dhss.mo.gov/con.]* **3418 Knipp Drive, Jefferson City, Missouri, (573) 751-6403. This rule does not include any later amendments or additions.**

(A) Letter of Intent (Form MO 580-1860).

(B) Proposed Expenditures (Form MO 580-2375).

AUTHORITY: section 197.320, RSMo 2000. Emergency rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Original rule filed Aug. 29, 1997, effective March 30, 1998. For intervening history, please consult the Code of State Regulations. Amended: Filed Oct. 1, 2010.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Thomas R. Piper, Director, Certificate of Need Program, PO Box 570, Jefferson City, MO 65102 or email to tom.piper@dhss.mo.gov. To be considered, comments must be received by December 1, 2010. A public hearing has been scheduled for December 1, 2010, at 10:00 a.m., located in the Knipp Training Room, 3418 Knipp Drive, Jefferson City, Missouri.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 60—Missouri Health Facilities Review Committee
Chapter 50—Certificate of Need Program

PROPOSED AMENDMENT

19 CSR 60-50.420 Review Process. The committee proposes to amend sections (1), (3), (5), (6), (8), (9), and (10), delete section (4), and renumber remaining sections.

PURPOSE: This rule is amended to streamline the review process by reducing applications and expanding electronic submission opportunities.

(1) The Certificate of Need (CON) filing deadlines are as follows:

(B) For expedited equipment replacement applications[,], and expedited long-term care (LTC) facility renovation or modernization applications[,], and expedited LTC bed expansions and replacements pursuant to section 197.318.8 through 197.318.10, RSMo], the tenth day of each month, or the next business day thereafter if that day is a holiday or weekend;

(3) All filings must [occur] **be received** at the principal office of the committee during regular business hours. The CONP staff, as an agent of the committee, shall provide notification of applications received through publication of the Application Review Schedule (schedule)[,], as follows:

(A) For full **and expedited** applications, the schedule shall include the filing date of the application, a brief description of the proposed service, the time and place for filing comments and requests for a public hearing, and the tentative date of the meeting at which the application is scheduled for review. Publication of the schedule shall occur on the next business day after the filing deadline. The publication of the schedule is conducted through the following actions:

1. The schedule shall be submitted to the secretary of state's office for publication in the next regularly-scheduled *Missouri Register*;

2. A press release about the CON application schedule shall be sent to all newspapers of general circulation **and legislators in [Missouri] the applicant's proposed service area** as supplied by the Department of Health and Senior Services (DHSS), Office of Public Information;

3. The schedule shall be posted on the CON web site; and

4. The schedule shall be [mailed] **emailed** to all affected persons who have registered with the CONP staff as having an interest in such CON applications[.]; **and**

[(B) For expedited applications the schedule shall include the filing date of the application, a brief description of the

proposed service, including the name and location of all participating facilities, the time and place for filing comments and requests for a public hearing, and the tentative decision date for the application. Publication of the schedule shall occur on the next business day after the filing deadline. The publication of the schedule is conducted through the following actions:

1. *The schedule shall be submitted to the secretary of state's office for publication in the next regularly scheduled Missouri Register; and*

2. *The schedule shall be posted on the CON web site.]*

[(C)](B) For non-applicability reviews, the listing of non-applicability letters to be confirmed shall be posted on the CON web site at least twenty (20) days prior to each scheduled meeting of the committee where confirmation is to take place.

[(4) When an application for a full review is filed pursuant to section 197.318.1, RSMo, the CONP staff shall immediately request certification of licensed and available bed occupancy and deficiencies for each of the most recent four (4) consecutive calendar quarters in the county and fifteen (15)-mile radius by the DHSS.]

*[(5)](4) The CONP staff shall review CON applications relative to the Criteria and Standards in the order filed. **If a full application has met all Criteria and Standards, and is not contested within thirty (30) days after filing, then its review may be conducted according to the expedited application process.***

*[(6)](5) The CONP staff shall notify the applicant in writing **or by email** regarding the completeness of a full CON application within fifteen (15) calendar days of filing or within five (5) working days for an expedited application.*

[(7)](6) Verbal information or testimony shall not be considered part of the application.

*[(8)](7) Subject to statutory time constraints, the CONP staff shall send its written analysis **by mail or email** to the committee as follows:*

(A) For full CON applications, the CONP staff shall send the analysis twenty (20) days in advance of the first committee meeting following the seventieth day after the CON application is filed. The written analysis of the CONP staff shall be sent to the applicant no less than fifteen (15) days before the meeting[.];

(B) For expedited applications which meet all statutory and rules requirements and which have no opposition, the CONP staff shall send its written analysis to the committee and the applicant within two (2) working days following the expiration of the thirty (30)-day public notice waiting period or the date upon which any required additional information is received, whichever is later[.]; **and**

(C) For expedited applications which do not meet all statutory and rules requirements or those which have opposition, they will be considered at the earliest scheduled committee meeting where the written analysis by the CONP staff can be sent to the committee and the applicant at least seven (7) days in advance.

*[(9)](8) See rule 19 CSR 60-50.600 for a description of the CON decision process **which shall apply to all face-to-face, videographic, telephonic, computerized, and other meeting venues.***

*[(10)](9) An applicant may withdraw an application without prejudice by written notice **by mail or email** at any time prior to the committee's decision. Later submission of the same application or an amended application shall be handled as a new application with a new fee.*

[(11)](10) In addition to using the Community Need Criteria and Standards as guidelines, the committee may also consider other factors to include, but not be limited to, the number of patients requiring treatment, the changing complexity of treatment, unique obstacles to access, competitive financial considerations, or the specialized nature of the service.

AUTHORITY: section 197.320, RSMo 2000. Emergency rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Original rule filed Aug. 29, 1997, effective March 30, 1998. For intervening history, please consult the Code of State Regulations. Amended: Oct. 1, 2010.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Thomas R. Piper, Director, Certificate of Need Program, PO Box 570, Jefferson City, MO 65102 or email to tom.piper@dhs.mo.gov. To be considered, comments must be received by December 1, 2010. A public hearing has been scheduled for December 1, 2010, at 10:00 a.m., located in the Knipp Training Room, 3418 Knipp Drive, Jefferson City, Missouri.

**Title 19—DEPARTMENT OF HEALTH AND
SENIOR SERVICES
Division 60—Missouri Health Facilities Review
Committee
Chapter 50—Certificate of Need Program**

PROPOSED AMENDMENT

19 CSR 60-50.430 Application Package. The committee proposes to amend sections (2), (3), (4), and (6), add new sections (6) and (7), and amend and renumber section (6).

PURPOSE: This rule is amended because the Certificate of Need Program office was moved to a new physical location, and the review process needs to be streamlined by reducing applications and expanding electronic submission opportunities, as well as clarifying public notice specifications and incorporating forms by reference.

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

(2) A written application package consisting of an original and eleven (11) bound copies (comb or three (3)-ring binder) **or an electronic file in PDF format** shall be prepared and organized as follows:

(B) The application package should use one (1) of the following CON Applicant's Completeness Checklists and Table of Contents appropriate to the proposed project, as follows:

1. New Hospital Application (Form MO 580-2501, **incorporated by reference**);

2. New or Additional Long-Term Care (LTC) Bed/s/ Application (Form MO 580-2502, **incorporated by reference**). **Use this for Residential Care, Assisted Living, Intermediate Care,**

and Skilled Nursing Facilities and Long-Term Care Hospitals;

3. New or Additional Long-Term Care Hospital (LTCH) Bed/s/ Application (**also use Form MO 580-2502**);

4. New or Additional Equipment Application (Form MO 580-2503, **incorporated by reference**);

[5. Expedited LTC Bed Replacement/Expansion Application (Form MO 580-2504);]

[6.]5. Expedited LTC Renovation/Modernization Application (Form MO 580-2505, **incorporated by reference**); or

[7.]6. Expedited Equipment Replacement Application (Form MO 580-2506, **incorporated by reference**).

(3) An Application Summary shall be composed of the completed forms in the following order:

(A) Applicant Identification and Certification (Form MO 580-1861, **incorporated by reference**). Additional specific information about board membership may be requested, if needed;

(B) A completed Representative Registration (Form MO 580-1869, **incorporated by reference**) for the contact person and any others as required by section 197.326(1), RSMo; and

(C) A detailed Proposed Project Budget (Form MO 580-1863, **incorporated by reference**), with an attachment which details how each line item was determined, including all methods and assumptions used.

(4) The Proposal Description shall include documents which:

(C) Proposals for new hospitals, new or additional long-term care (LTC) beds, or new major medical equipment must define the community to be served:

1. Describe the service area(s) population using year [2010] 2015 populations and projections which are consistent with those provided by the Bureau of Health Informatics which can be obtained by contacting:

Chief, Bureau of Health Informatics
Section of Public Health Practice and
Administrative Support (SPHPAS),/ /
Division of Community and Public Health
Department of Health and Senior Services
PO Box 570, Jefferson City, MO 65102
Telephone: (573) [526-4805] 751-6299

There will be a charge for any of the information requested, and seven to fourteen (7-14) days should be allowed for a response from [the] SPHPAS. Information requests should be made to SPHPAS such that the response is received at least two (2) weeks before it is needed for incorporation into the CON application.

2. Use the maps and population data received from SPHPAS with the CON Applicant's Population Determination Method to determine the estimated population **for LTC projects**, as follows:

A. Utilize all of the population for zip codes entirely within the fifteen (15)-mile radius for LTC beds or geographic service area for hospitals and major medical equipment;

B. Reference a state highway map (or a map of greater detail) to verify population centers (see Bureau of Health Informatics) within each zip code overlapped by the fifteen (15)-mile radius or geographic service area;

C. Categorize population centers as either "in" or "out" of the fifteen (15)-mile radius or geographic service area and remove the population data from each affected zip code categorized as "out";

D. Estimate, to the nearest ten percent (10%), the portion of the zip code area that is within the fifteen (15)-mile radius or geographic service area by "eyeballing" the portion of the area in the radius (if less than five percent (5%), exclude the entire zip code);

E. Multiply the remaining zip code population (total population less the population centers) by the percentage determined in (4)(C)2.D. (due to numerous complexities, population centers will not be utilized to adjust overlapped zip code populations in Jackson,

St. Louis, and St. Charles counties or St. Louis City; instead, the total population within the zip code will be considered uniform and multiplied by the percentage determined in **subparagraph (4)(C)2.D.**;

F. Add back the population center(s) "inside" the radius or region for zip codes overlapped; and

G. The sum of the estimated zip codes, plus those entirely within the radius, will equal the total population within the fifteen (15)-mile radius or geographic service area.

3. Provide other statistics, such as studies, patient origin, or discharge data, Hospital Industry Data Institute's information, or consultants' reports, to document the size and validity of any proposed user-defined "geographic service area";

(6) Document that providers of similar health services in the proposed service area have been notified of the application by a public notice in the local newspaper of general circulation before it was filed with the CON Program by the applicant.

(7) In addition to using the Community Need Criteria and Standards as guidelines, the committee may also consider other factors to include, but not be limited to, the number of patients requiring treatment, the changing complexity of treatment, unique obstacles to access, competitive financial considerations, or the specialized nature of the service.

[(6)](8) The [most current version of Forms MO 580-2501, MO 580-2502, MO 580-2503, MO 580-2504, MO 580-2505, MO 580-1861, MO 580-1869 and MO 580-1863] following forms cited in this rule are incorporated by reference and published by the Certificate of Need Program (CONP), October 1, 2009, and may be downloaded from <http://www.dhss.mo.gov/CON/Forms.html>, obtained by mailing a written request with a self-addressed stamped envelope to [the Certificate of Need Program (CONP)], PO Box 570, Jefferson City, MO 65102-0570, or acquired in person at the CONP Office, [or, if technically feasible, by downloading a copy of the forms from the CONP website at www.dhss.mo.gov/con/] 3418 Knipp Drive, Jefferson City, Missouri, (573) 751-6403. This rule does not include any later amendments or additions.

(A) New Hospital Application (Form MO 580-2501).

(B) New or Additional Long-Term Care (LTC) Bed Application (Form MO 580-2502).

(C) New or Additional Equipment Application (Form MO 580-2503).

(D) Expedited LTC Renovation/Modernization Application (Form MO 580-2505).

(E) Expedited Equipment Replacement Application (Form MO 580-2506).

(F) Applicant Identification and Certification (Form MO 580-1861).

(G) Representative Registration (Form MO 580-1869).

(H) Proposed Project Budget (Form MO 580-1863).

AUTHORITY: section 197.320, RSMo 2000. Emergency rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Original rule filed Aug. 29, 1997, effective March 30, 1998. For intervening history, please consult the Code of State Regulations. Amended: Filed Oct. 1, 2010.

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 cost private entities seven thousand six hundred twenty dollars (\$7,620) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COM-

MENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Thomas R. Piper, Director, Certificate of Need Program, PO Box 570, Jefferson City, MO 65102 or email to tom.piper@dhss.mo.gov. To be considered, comments must be received by December 1, 2010. A public hearing has been scheduled for December 1, 2010, at 10:00 a.m., located in the Knipp Training Room, 3418 Knipp Drive, Jefferson City, Missouri.

**FISCAL NOTE
PRIVATE COST**

- I. Department Title: Department of Health and Senior Services
Division Title: Division of Regulation and Licensure
Chapter Title: Missouri Health Facilities Review Committee**

Rule Number and Title:	19 CSR 60-50.430 Application Package
Type of Rulemaking:	Proposed Amendment

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
32 hospitals	23 in large cities 9 in small cities	\$4,870
7 nursing homes	5 in large cities 2 in small cities	\$1,060
10 residential care and assisted living facilities	8 in large cities 2 in small cities	\$1,660
1 freestanding medical facility	1 in small city	\$30

III. WORKSHEET

Hospitals:	23 large city x \$200 each = \$4,600	9 small city x \$30 each = \$270	TOTAL = \$4,870
Nursing homes:	5 large city x \$200 each = \$1,000	2 small city x \$30 each = \$60	TOTAL = \$1,060
Resid/AsstdLvg:	8 large city x \$200 each = \$1,600	2 small city x \$30 each = \$60	TOTAL = \$1,660
Freestanding Fac:		1 small city x \$30 each = \$30	TOTAL = \$ 30
			GRAND TOTAL = \$7,620

IV. ASSUMPTIONS

This proposed amendment would add the following requirement in conjunction with the filing of a Certificate of Need application: "(6) Document that providers of similar health services in the proposed service area have been notified of the application by a public notice in the local newspaper of general circulation before it was filed with the CON Program by the applicant."

It is assumed that the average public notice would be 50 words in length, and that the one-day rates for posting such a notice in large city (like St. Louis and Kansas City) newspapers are estimated to be \$200. In all other small city (like Columbia, Springfield, Jefferson City) newspapers, it is estimated that the one-day rate would be \$30. Thus, the total estimated private cost would be \$7,620.

It is noted that only the residential care and assisted living facilities would be considered small businesses in that the majority of them have a staff size of well under 25 employees.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 60—Missouri Health Facilities Review Committee
Chapter 50—Certificate of Need Program

PROPOSED AMENDMENT

19 CSR 60-50.440 Criteria and Standards for Equipment and New Hospitals. The committee proposes to amend sections (1), (2), (3), and (4).

PURPOSE: This rule is amended to streamline the review process by reducing applications and expanding electronic submission opportunities, as well as clarifying public notice specifications and incorporating forms by reference.

(1) For new units or services in the service area, use the following methodologies:

(A) The population-based need formula should be (Unmet need = $(R \times P) - U$) where:
P = Year [2005] 2015 population in the service area(s). Use population in 19 CSR 60-50.430;
U = Number of service units in the service area(s); and
R = Community need rate of one (1) unit per population listed as follows:

1. Magnetic resonance imaging unit	[100,000]28,000
2. Positron emission tomography/computed tomography unit	[500,000]224,000
3. Lithotripsy unit	[1,000,000]486,000
4. Linear accelerator unit	[100,000]78,000
5. [Adult c]Cardiac catheterization lab	[50,000]42,000
[6. Pediatric cardiac catheterization lab	50,000
7. Adult open heart surgery rooms	100,000
8. Pediatric open heart surgery rooms	100,000
9. All general surgery	10,000]
[10.]6. Gamma knife	[7,500,000]1,947,000
[11. Excimer laser	500,000]
7. Computed tomography	15,000

(B) The minimum annual utilization for all other providers in the service area should achieve at least the following community need rates as follows:

1. Magnetic resonance imaging procedures	2,000
2. Positron emission tomography/computed tomography procedures	1,000
3. Lithotripsy treatments	1,000
4. Linear accelerator treatments	3,500
5. [Adult c]Cardiac catheterization procedures (include coronary angioplasties)	500
[6. Pediatric cardiac catheterization procedures	250
7. Adult open heart surgery operations	200
8. Pediatric open heart surgery operations	100
9. All general surgery	750]
[10.]6. Gamma knife treatments	200
[11. Hemodialysis treatments	200
12. Excimer laser procedures	1,800]
7. Computed tomography	3,500

(2) For additional units or services, the applicant's optimal annual utilization should achieve at least the following community need rates as follows:

(B) Positron emission tomography/computed tomography procedures	1,000
(E) [Adult c]Cardiac catheterization procedures	750
[(F) Pediatric cardiac catheterization procedures	375
(G) Adult open heart surgery operations	300
(H) Pediatric open heart surgery operations	150
(I) All other general surgery	1,125]

[(J)](F) Gamma knife treatments	200
[(K) Hemodialysis treatments	200
(L) Excimer laser procedures	3,600]
(G) Computed tomography	4,000

(3) For replacement equipment, utilization standards are not used, but rather the following questions should be answered:

(C) How does the replacement unit affect quality of care, **utilization, and operational efficiencies** compared to the existing unit?

(F) What technological advances **and capabilities** will the new unit include?

[(I) What impact will the new unit have on utilization and operational efficiencies?

(J) How will the new unit add additional capabilities?]

[(K)](I) By what percentage will this replacement increase patient charges?

(4) For the construction of a new hospital, the following questions should be answered:

(D) What is the unmet need according to the following population-based bed need formula using (Unmet Need = $(R \times P) - U$), where:
P = Year [2005] 2015 population in the service area;

U = Number of beds in the service area; and

R = Community need rate of one (1) bed per population in the service area as follows:

AUTHORITY: section 197.320, RSMo 2000. Emergency rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Original rule filed Aug. 29, 1997, effective March 30, 1998. For intervening history, please consult the Code of State Regulations. Amended: Filed Oct. 1, 2010.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Thomas R. Piper, Director, Certificate of Need Program, PO Box 570, Jefferson City, MO 65102 or email to tom.piper@dhss.mo.gov. To be considered, comments must be received by December 1, 2010. A public hearing has been scheduled for December 1, 2010, at 10:00 a.m., located in the Knipp Training Room, 3418 Knipp Drive, Jefferson City, Missouri.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 60—Missouri Health Facilities Review Committee
Chapter 50—Certificate of Need Program

PROPOSED AMENDMENT

19 CSR 60-50.450 Criteria and Standards for Long-Term Care. The committee proposes to delete sections (1) and (6), renumber and amend sections (2)–(5), (8), and (9), and renumber section (7).

PURPOSE: This rule is amended because the Certificate of Need Program office was moved to a new physical location, and the review process needs to be streamlined by reducing applications and expanding electronic submission opportunities, as well as clarifying public notice specifications and incorporating forms by reference.

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

[(1) All additional long-term care (LTC) beds in nursing homes, hospitals, residential care facilities and assisted living facilities (RCF/ALF), and beds in long-term acute hospitals are subject to the LTC bed minimum occupancy requirements (MOR) pursuant to sections 197.317 and 197.318(1), RSMo, with certain exemptions and exceptions pursuant to sections 197.305(7) and 197.312, RSMo, and LTC bed expansions and replacements pursuant to sections 197.318.8 through 197.318.10, RSMo.]

[(2) The MOR for additional LTC beds pursuant to section 197.318.1, RSMo, shall be met if the average occupancy for all licensed and available LTC beds located within the county and within fifteen (15) miles of the proposed site exceeded ninety percent (90%) during at least each of the most recent four (4) consecutive calendar quarters at the time of application filing as reported in the Division of Regulation and Licensure (DRL), Department of Health and Senior Services, Six-Quarter Occupancy of Hospital and Nursing Home (or Residential Care and Assisted Living Facility) Licensed and Available Beds Utilization and certified through a written finding by the DRL, in which case the] (1) The following population-based long-term care bed need methodology for the fifteen (15)-mile radius shall be used to determine the maximum size of the need:

(A) Approval of additional intermediate care facility/skilled nursing facility (ICF/SNF) beds will be based on a service area need determined to be fifty-three (53) beds per one thousand (1,000) population age sixty-five (65) and older minus the current supply of ICF/SNF beds shown in the Six-Quarter Occupancy of Hospital and Nursing Home Licensed and Available Beds as provided by the Certificate of Need Program (CONP) which includes licensed and Certificate of Need (CON)-approved beds; [and]

(B) Approval of additional RCF/ALF beds will be based on a service area need determined to be [sixteen (16)] twenty-five (25) beds per one thousand (1,000) population age sixty-five (65) and older minus the current supply of RCF/ALF beds shown in the Six-Quarter Occupancy of Residential Care and Assisted Living Facility Licensed and Available Beds as provided by the CONP which includes licensed and CON-approved beds./; and

(C) Approval for Long-Term Care Hospital (LTCH) beds, as described in 42 CFR, section 412.23(e), will be based on a service area need determined to be one-tenth (0.1) bed per one thousand (1,000) population minus the current supply of LTCH beds shown in the Six-Quarter Occupancy of Long-Term Care Hospital Facility Licensed and Available Beds as provided by the CONP which includes licensed beds and CON-approved beds.

[(3)](2) Replacement Chapter 198 beds may qualify for [an exception to the LTC bed MOR plus shortened information requirements and review time frames] a Non-Applicability determination if an applicant proposes to—

(A) Relocate RCF/ALF beds within a six (6)-mile radius pursuant to section 197.318.8(4), RSMo;

(B) Replace one-half (1/2) of its licensed beds within a thirty (30)-mile radius pursuant to section 197.318.9, RSMo; or

(C) Replace a facility in its entirety within a fifteen (15)-mile radius pursuant to section 197.318.10, RSMo, under the following conditions:

1. The existing facility's beds shall be replaced at only one (1) site;

2. The existing facility and the proposed facility shall have the same owner(s), regardless of corporate structure; and

3. The owner(s) shall stipulate in writing that the existing facility's beds to be replaced will not be used later to provide long-term care services; or if the facility is operated under a lease, both the lessee and the owner of the existing facility shall stipulate the same in writing.

[(4)](3) LTC bed expansions involving a Chapter 198 facility may qualify for [an exception to the LTC bed MOR. In addition to the shortened information requirements and review time frames, applicants shall also submit] a Non-Applicability determination if the following information is submitted:

(A) If an effort to purchase has been successful pursuant to section 197.318.8(1), RSMo, a Purchase Agreement (Form MO 580-2352, incorporated by reference) between the selling and purchasing facilities, and a copy of the selling facility's reissued license verifying the surrender of the beds sold; or

(B) If an effort to purchase has been unsuccessful pursuant to section 197.318.8(1), RSMo, a Purchase Agreement (Form MO 580-2352, incorporated by reference) between the selling and purchasing facilities which documents the "effort(s) to purchase" LTC beds.

[(5)](4) An exception to the [LTC bed MOR and] CON application filing fee will be recognized for any proposed facility which is designed and operated exclusively for persons with acquired human immunodeficiency syndrome (AIDS).

[(6) An exception to the LTC bed MOR will be recognized for a proposed LTC facility where at least ninety-five percent (95%) of the patients require kosher diets pursuant to section 197.318.5, RSMo.]

[(7)](5) Any newly-licensed Chapter 198 facility established as a result of the Alzheimer's and dementia demonstration projects pursuant to Chapter 198, RSMo, or aging-in-place pilot projects pursuant to Chapter 198, RSMo, as implemented by the DRL, may be licensed by the DRL until the completion of each project. If a demonstration or pilot project receives a successful evaluation from the DRL and a qualified Missouri school or university, and meets the DRL standards for licensure, this will ensure continued licensure without a new CON.

[(8)](6) For LTC renovation or modernization projects which do not include increasing the number of beds, the applicant should document the following, if applicable:

(A) The proposed project is needed to comply with current facility code [requirements of] local, state, or federal government/s;

(B) The proposed project is needed to meet requirements for licensure, certification, or accreditation, which if not undertaken, could result in a loss of accreditation or certification];

[(C)](B) Operational efficiencies will be attained through reconfiguration of space and functions;

[(D)](C) The methodologies used for determining need/;

(E) The rationale for and the reallocation of space and functions; and

[(F)](D) The benefits to the facility because of its age or condition.

[(9)](7) The [most current version of Form MO 580-2352] following form cited in this rule is incorporated by reference and published by the Certificate of Need Program (CONP), October 1, 2009, and may be downloaded from <http://www.dhss.mo.gov/CON/Forms.html>, obtained by mailing a written request with a self-addressed stamped envelope to [the] CONP, PO Box 570, Jefferson City, MO 65102-0570, or acquired in person at the CONP Office, [or, if technically feasible, by

downloading a copy of the form from the CONP website at www.dhss.mo.gov/con/ 3418 Knipp Drive, Jefferson City, Missouri, (573) 751-6403. This rule does not include any later amendments or additions.

(A) Purchase Agreement (Form MO 580-2352).

AUTHORITY: section 197.320, RSMo 2000. Emergency rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Original rule filed Aug. 29, 1997, effective March 30, 1998. For intervening history, please consult the *Code of State Regulations*. Amended: Filed Oct. 1, 2010.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Thomas R. Piper, Director, Certificate of Need Program, PO Box 570, Jefferson City, MO 65102 or email to tom.piper@dhss.mo.gov. To be considered, comments must be received by December 1, 2010. A public hearing has been scheduled for December 1, 2010, at 10:00 a.m., located in the Knipp Training Room, 3418 Knipp Drive, Jefferson City, Missouri.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 60—Missouri Health Facilities Review Committee
Chapter 50—Certificate of Need Program

PROPOSED AMENDMENT

19 CSR 60-50.470 Criteria and Standards for Financial Feasibility. The committee proposes to amend sections (1), (3), and (5).

PURPOSE: This rule is amended because the Certificate of Need Program office was moved to a new physical location, and the review process needs to be streamlined by eliminating a financial form and incorporating forms by reference.

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

(1) Proposals for any new hospital, nursing home, residential care facility, or assisted living facility construction must include documentation that the proposed costs per square foot are reasonable when compared to the latest [“RS Means [Construction] Cost Data/”] **Percentile Limit Total New Construction Project Costs (Form MO 580-1866, incorporated by reference)** available from the Certificate of Need Program (CONP). Any proposal with costs in excess of the three-fourths (3/4) percentile must include justification for the higher costs.

(3) Document financial feasibility by including:—

(A) The Service-Specific Revenues and Expenses (Form MO 580-1865, **incorporated by reference**) as a **financial proforma** for each

revenue generating service affected by the project for the past three (3) years projected through three (3) years beyond project completion; and

[(B) *The Detailed Institutional Cash Flows (Form MO 580-1866) for the past three (3) years projected through three (3) years beyond project completion; and]*

[(C)](B) For existing services, a copy of the latest available audited financial statements or the most recent Internal Revenue Service (IRS) 990 Form or similar IRS filing for facilities not having individual audited financial statements.

(5) The [most current version of Forms MO 580-1865 and MO 580-1866] following forms cited in this rule are incorporated by reference and published by the Certificate of Need Program (CONP), October 1, 2009, and may be downloaded from <http://www.dhss.mo.gov/CON/Forms.html>, obtained by mailing a written request with a self-addressed stamped envelope to [the] CONP, PO Box 570, Jefferson City, MO 65102-0570, or acquired in person at the CONP Office, [or, if technically feasible, by downloading a copy of the forms from the CONP website at www.dhss.mo.gov/con/] 3418 Knipp Drive, Jefferson City, Missouri, (573) 751-6403. This rule does not include any later amendments or additions.

(A) Service-Specific Revenues and Expenses (Form MO 580-1865).

(B) RS Means Cost Data Percentile Limit Total New Construction Project Costs (Form MO 580-1866).

AUTHORITY: section 197.320, RSMo 2000. Emergency rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Original rule filed Aug. 29, 1997, effective March 30, 1998. For intervening history, please consult the *Code of State Regulations*. Amended: Filed Oct. 1, 2010.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Thomas R. Piper, Director, Certificate of Need Program, PO Box 570, Jefferson City, MO 65102 or email to tom.piper@dhss.mo.gov. To be considered, comments must be received by December 1, 2010. A public hearing has been scheduled for December 1, 2010, at 10:00 a.m., located in the Knipp Training Room, 3418 Knipp Drive, Jefferson City, Missouri.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 60—Missouri Health Facilities Review Committee
Chapter 50—Certificate of Need Program

PROPOSED AMENDMENT

19 CSR 60-50.500 Additional Information. The committee proposes to amend sections (2), (3), (4), and (5).

PURPOSE: This rule is amended to clarify application submission requirements, expand electronic submission opportunities, and delete archaic language.

(2) If an application is determined to be incomplete, the applicant shall be notified within fifteen (15) calendar days after filing (five (5)

working days in the case of an expedited application). The applicant's written response **in the form of an original and eleven (11) copies or electronic version** shall be received within fifteen (15) calendar days after receipt of notification.

(3) Information submitted by *[interested parties]* **affected persons** should be received at the committee's principal office at least thirty (30) calendar days before the scheduled meeting of the committee.

(4) Copies of any additional information sent directly to the committee by applicants or *[interested parties]* **affected persons** should also be sent to the Certificate of Need Program (CONP) for file copies.

(5) When a request in writing **or email** is filed by any affected person within thirty (30) calendar days from the date of publication of the Application Review Schedule, the committee or CONP staff shall hold a public hearing on any application under the following conditions:

(C) The applicant may have up to fifteen (15) minutes for *[an applicant]* a presentation at the public hearing;

AUTHORITY: section 197.320, RSMo 2000. Original rule filed June 2, 1994, effective Nov. 30, 1994. For intervening history, please consult the Code of State Regulations. Amended: Filed Oct. 1, 2010.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Thomas R. Piper, Director, Certificate of Need Program, PO Box 570, Jefferson City, MO 65102 or email to tom.piper@dhss.mo.gov. To be considered, comments must be received by December 1, 2010. A public hearing has been scheduled for December 1, 2010, at 10:00 a.m., located in the Knipp Training Room, 3418 Knipp Drive, Jefferson City, Missouri.

**Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 60—Missouri Health Facilities Review Committee
Chapter 50—Certificate of Need Program**

PROPOSED AMENDMENT

19 CSR 60-50.600 Certificate of Need Decisions. The committee proposes to amend sections (1) and (3).

PURPOSE: This rule is amended to expand electronic submission opportunities.

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

(1) Decisions on full Certificate of Need (CON) applications and contested expedited applications shall be subject to the following:

(A) Parliamentary procedures for all **face-to-face, videographic, telephonic, and computerized** meetings shall follow *Robert's Rules of Order, incorporated by reference*, newly revised [2000] edition, 10th edition, published October 2000, Perseus Publishing, 11 Cambridge Center, Cambridge, MA 02142. **This rule does not include any later amendments or additions.**

(B) The *[Certificate of Need]* CON Program's analysis becomes the findings of fact for the Missouri Health Facilities Review Committee (committee) decision except to the extent that it is expressly rejected, amended, or replaced by the committee in which case the minutes of the committee will contain the changes and become the amended findings of fact of the committee. The committee's final vote becomes conclusion of law.

(3) The committee shall make a decision on an application within one hundred thirty (130) calendar days after the date the application is filed[,] and subsequently notify the applicant by providing either a legal certificate or denial letter **by mail or email**.

AUTHORITY: section 197.320, RSMo 2000. Original rule filed June 2, 1994, effective Nov. 30, 1994. For intervening history, please consult the Code of State Regulations. Amended: Filed Oct. 1, 2010.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Thomas R. Piper, Director, Certificate of Need Program, PO Box 570, Jefferson City, MO 65102 or email to tom.piper@dhss.mo.gov. To be considered, comments must be received by December 1, 2010. A public hearing has been scheduled for December 1, 2010, at 10:00 a.m., located in the Knipp Training Room, 3418 Knipp Drive, Jefferson City, Missouri.

**Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 60—Missouri Health Facilities Review Committee
Chapter 50—Certificate of Need Program**

PROPOSED AMENDMENT

19 CSR 60-50.700 Post-Decision Activity. The committee proposes to amend sections (1), (2), and (8), delete section (3), amend and renumber section (10), and renumber remaining sections.

PURPOSE: This rule is amended because the Certificate of Need Program office was moved to a new physical location and has changed its website address.

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

(1) Applicants who have been granted a Certificate of Need (CON) or a Non-Applicability CON letter shall file reports **by mail or email** with the Missouri Health Facilities Review Committee (Committee),

using Periodic Progress Report (Form MO 580-1871, **incorporated by reference**). A report shall be filed by the end of each six (6)-month period after CON approval, or issuance of a Non-Applicability CON letter, until project construction and/or expenditures are complete. All Periodic Progress Reports must contain a complete and accurate accounting of all expenditures for the report period.

(2) Applicants who have been granted a CON and fail to incur a capital expenditure within six (6) months may request an extension of six (6) months by submitting a letter to the Committee outlining the reasons for the failure, with a listing of the actions to be taken within the requested extension period to insure compliance. The Certificate of Need Program (CONP) staff on behalf of the Committee will analyze the request and grant an extension, if appropriate. Applicants *[who]* may request additional extensions **and** must provide additional financial information *[or]* plus other *[information, if requested by the CONP staff]* **documentation describing delays.**

[(3) For those long-term care proposals receiving a CON in 2003 for which no construction can begin prior to January 1, 2004, such proposals shall not be subject to forfeiture until July 1, 2004, at which time reporting requirements shall commence. Applicants may request an extension of six (6) months for such proposals.]

[(4)](3) A Non-Applicability CON letter is valid *[(4)]* (6) months from the date of issuance. Failure to incur a capital expenditure or purchase the proposed equipment within that time frame shall result in the Non-Applicability CON letter becoming null and void. The applicant may request one (1) six (6)-month extension unless otherwise constrained by statutory changes.

[(5)](4) A CON shall be subject to forfeiture for failure to:—

- (A) Incur a project-specific capital expenditure within twelve (12) months after the date the CON was issued through initiation of project aboveground construction or lease/purchase of the proposed equipment since a capital expenditure, according to generally accepted accounting principles, must be applied to a capital asset; or
- (B) File the required Periodic Progress Report.

[(6)](5) If the CONP staff finds that a CON may be subject to forfeiture:—

- (A) Not less than thirty (30) calendar days prior to a Committee meeting, the CONP shall notify the applicant in writing of the possible forfeiture, the reasons for it, and its placement on the Committee agenda for action; and
- (B) After receipt of the notice of possible forfeiture, the applicant may submit information to the Committee within ten (10) calendar days to show compliance with this rule or other good cause as to why the CON shall not be forfeited.

[(7)](6) If the Committee forfeits a CON, or a Non-Applicability CON letter becomes null and void, CONP staff shall notify all affected state agencies of this action.

[(8)](7) Cost overrun review procedures implement the CON statute section 197.315.7, RSMo. Immediately upon discovery that a project's actual costs would exceed approved project costs by more than ten percent (10%), an applicant shall apply for approval of the cost variance. A nonrefundable fee in the amount of one-tenth of one percent (0.1%) of the additional project cost above the approved amount made payable to "Missouri Health Facilities Review Committee" shall be required. The original and eleven (11) copies **or electronic version** of the information requirements for a cost overrun review are required as follows:

- (A) Amount and justification for cost overrun shall document:—

1. Why and how the approved project costs would be exceeded, including a detailed listing of the areas involved;
 2. Any changes that have occurred in the scope of the project as originally approved; and
 3. The alternatives to incurring this overrun that were considered and why this particular approach was selected; and
- (B) Provide a Proposed Project Budget (Form MO 580-1863, **incorporated by reference**).

[(9)](8) At any time during the process from Letter of Intent to project completion, the applicant is responsible for notifying the Committee of any change in the designated contact person. If a change is necessary, the applicant must file a Contact Person Correction (Form MO 580-1870, **incorporated by reference**).

[(10)](9) The *[most current version of Forms MO 580-1871, MO 580-1863, and MO 580-1870]* following forms cited in this rule are incorporated by reference and published by the Certificate of Need Program (CONP), October 1, 2009, and may be downloaded from <http://www.dhss.mo.gov/CON/Forms.html>, obtained by mailing a written request with a self-addressed stamped envelope to *[the]* CONP, PO Box 570, Jefferson City, MO 65102-0570, or acquire in person at the CONP Office, *[or, if technically feasible, by downloading a copy of the forms from the CONP website at www.dhss.mo.gov/con.]* **3418 Knipp Drive, Jefferson City, Missouri, (573) 751-6403. This rule does not include any later amendments or additions.**

- (A) Periodic Progress Report (Form MO 580-1871).
- (B) Proposed Project Budget (Form MO 580-1863).
- (C) Contact Person Correction (Form MO 580-1870).

AUTHORITY: section 197.320, RSMo 2000. Original rule filed June 2, 1994, effective Nov. 30, 1994. For intervening history, please consult the Code of State Regulations. Amended: Filed Oct. 1, 2010.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Thomas R. Piper, Director, Certificate of Need Program, PO Box 570, Jefferson City, MO 65102 or email to tom.piper@dhss.mo.gov. To be considered, comments must be received by December 1, 2010. A public hearing has been scheduled for December 1, 2010, at 10:00 a.m., located in the Knipp Training Room, 3418 Knipp Drive, Jefferson City, Missouri.

**Title 19—DEPARTMENT OF HEALTH AND
SENIOR SERVICES
Division 60—Missouri Health Facilities Review
Committee
Chapter 50—Certificate of Need Program**

PROPOSED AMENDMENT

19 CSR 60-50.800 Meeting Procedures. The committee proposes to amend sections (1), (2), (5), and (7).

PURPOSE: This rule is amended because the Certificate of Need Program office was moved to a new physical location and has changed its website address.

PUBLISHER'S NOTE: The secretary of state has determined that the

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

must be received by December 1, 2010. A public hearing has been scheduled for December 1, 2010, at 10:00 a.m., located in the Knipp Training Room, 3418 Knipp Drive, Jefferson City, Missouri.

(1) The regular meetings of the Missouri Health Facilities Review Committee (committee) to consider Certificate of Need (CON) applications shall be held approximately every eight (8) weeks according to a schedule adopted by the committee before the beginning of each calendar year and modified periodically to reflect changes. A copy of this calendar may be obtained from the CON Program (CONP) staff or CON website.

(2) The original and eleven (11) copies or electronic version of all new information not previously in the application or requests for the addition of agenda items shall be received by the CONP staff at least thirty (30) calendar days before the scheduled meeting with one (1) exception. An applicant shall have no less than fifteen (15) days to respond to the findings of the staff and adverse information received from other parties. An applicant should respond in writing to an inquiry from a committee member at any time, and the response shall be provided to the committee for consideration.

(5) The committee may give the applicant and *[interested parties]* affected persons an opportunity to make brief presentations at the meeting according to the Missouri Health Facilities Review Committee Meeting Format and Missouri Health Facilities Review Committee Meeting Protocol. The applicant and *[interested parties]* affected persons shall conform to the following procedures:

(E) Rebuttals by applicants of presentations by *[interested parties]* affected persons are generally allowed;

(F) All presenters shall complete and sign a Representative Registration (Form MO 580-1869, incorporated by reference) and give it to the sign-in coordinator prior to speaking;

(7) The *[most current version of Form MO 580-1869]* following form cited in this rule is incorporated by reference and published by the Certificate of Need Program (CONP), October 1, 2009, and may be downloaded from <http://www.dhss.mo.gov/CON/Forms.html>, obtained by mailing a written request with a self-addressed stamped envelope to *[the]* CONP, PO Box 570, Jefferson City, MO 65102-0570, or acquired in person at the CONP Office, *[or, if technically feasible, by downloading a copy of the form from the CONP website at www.dhss.mo.gov/con/]* 3418 Knipp Drive, Jefferson City, Missouri, (573) 751-6403. This rule does not include any later amendments or additions.

(A) Representative Registration (Form MO 580-1869).

AUTHORITY: section 197.320, RSMo 2000. Original rule filed June 2, 1994, effective Nov. 30, 1994. For intervening history, please consult the Code of State Regulations. Amended: Filed Oct. 1, 2010.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Thomas R. Piper, Director, Certificate of Need Program, PO Box 570, Jefferson City, MO 65102 or email to tom.piper@dhss.mo.gov. To be considered, comments

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

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

**Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 10—Air Conservation Commission
Chapter 6—Air Quality Standards, Definitions, Sampling
and Reference Methods and Air Pollution Control
Regulations for the Entire State of Missouri**

ORDER OF RULEMAKING

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

**10 CSR 10-6.020 Definitions and Common Reference Tables
is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on June 1, 2010 (35 MoReg 858-862). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Missouri Department of Natural Resources' Air Pollution Control Program received one (1) comment from Kowa American Corporation and one (1) comment from the American Coatings Association.

COMMENT #1: Kowa American Corporation asked for a status on their request to amend the definition rule to add two (2) compounds to the exempt volatile organic compound (VOC) list.

RESPONSE: The rule action timeline was explained to Kowa American Corporation, and they were advised that the proposed

amendment was going to public hearing on July 28, 2010. No wording changes have been made to the proposed amendment as a result of this comment.

COMMENT #2: The American Coatings Association commented that they support this rule amendment because the coatings industry is under constant pressure to reformulate products to lower and lower VOC content. As a result of this pressure, there is a critical and urgent need for safe, effective, and affordable exempt solvents; and coating formulators need all available tools to formulate both lower VOC and reactivity coatings. Also, these compounds were exempted by the U.S. Environmental Protection Agency based on their negligible contribution to tropospheric ozone formation.

RESPONSE: The department appreciates this supportive comment. No wording changes have been made to the proposed amendment as a result of this comment.

**Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 60—Safe Drinking Water Commission
Chapter 4—Contaminant Levels and Monitoring**

ORDER OF RULEMAKING

By the authority vested in the Safe Drinking Water Commission under section 640.100, RSMo Supp. 2009, the commission adopts a rule as follows:

10 CSR 60-4.025 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on May 17, 2010 (35 MoReg 769-777). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Safe Drinking Water Commission held a public hearing on the proposed rule on June 21, 2010. The department testified that the proposed rule adopts 40 CFR part 141 subpart S, the U.S. Environmental Protection Agency's (EPA) Ground Water Rule. The rule sets standards for compliance monitoring, source water monitoring, corrective actions, treatment techniques, and sanitary surveys for ground water systems. The department testified that the proposed rule substantially adopts the EPA rule but does include some state-specific modifications or requirements. Both the EPA rule and this proposed rule provide systems with four options to resolve a significant deficiency. The proposed rule requires department approval of the option implemented by the system. This is found in paragraph (1)(C)5. of the rule. Also, the EPA rule requires states to develop a list of significant deficiencies that, if found during a sanitary survey, the system will be required to correct within 120 days or on a schedule approved by the department. The department has included this list in paragraph (4)(A)4. of the proposed rule.

No public comments were made at the hearing. The public comment period for submitting written comments ended on June 30, 2010. Written comments were received from representatives of three public water systems, one engineering consulting firm, and one water industry association.

COMMENT #1: The representative of an engineering consulting firm commented that it is imperative that the Public Drinking Water Branch (PDWB) be responsible for the implementation and decisions for this rule so that the requirements of the rule will be applied consistently throughout the state. Due to the complex nature of the rule, the requirements are subject to being interpreted and implemented

inconsistently throughout the state by each regional office staff. An inconsistent implementation will have a tremendous and unnecessary financial impact on the regulated systems.

RESPONSE: The commission appreciates the comment and agrees that consistency in state-wide implementation of this rule is important. Staff of the Public Drinking Water Branch continually strive to meet this goal with the regional offices through meetings, trainings, information dissemination, facilitating on-going communication, and other means. No change to the rule is requested or made.

COMMENT #2: Representatives of three major public water systems and an engineering consulting firm commented on various implementation issues. The water system representatives commented on the requirement to go to breakpoint chlorination in order to achieve 4-log removal or inactivation of viruses. The commenters request that inactivation credit be given for chloramination disinfection. The commenters pointed out that for systems with natural ammonia the requirement to provide breakpoint chlorination to achieve virus removal credit has many negative implications including high initial capital costs, increased on-going costs, security concerns associated with additional chlorine stored on-site, and an increased risk of disinfection by-product (DBP) formation. One commenter pointed out that an additional benefit of providing credit for chloramination disinfection is the reduced potential of DBPs that can be problematic with the use of free chlorine disinfection.

One commenter's system has tested over 100 distribution system samples per month for 54 years with no total coliform violations. One commenter stated that this requirement with its high capital and on-going costs would create an undue hardship on their customers in the absence of identified susceptibility to virus contamination. A water system and engineering consulting firm commented that any evaluations should include testing of the source water to determine if viruses are present. If viruses are not present, the system should not be required to provide 4-log treatment. Under the surface water rules the systems were required to monitor their source water for the presence of *Cryptosporidium* to determine if additional treatment might be necessary. Systems should be given the opportunity to provide data showing the present or absence of viruses in their source water.

RESPONSE: These are implementation issues rather than comments on the proposed rule. No changes to the rule language are requested or made. The department is reviewing information provided by the commenters and has also gathered information from other states on their approaches to these difficult issues. The outcome of the discussions will be shared promptly with all regional offices for consistency in implementing the rule. No changes to the rule are requested or made.

COMMENT #3: Representatives of two major public water systems requested that consideration be given to ground water systems for contact time and removal credit similar to the credit provided to surface water systems under the surface water treatment rules. Surface water systems are credited with 2.5-log *Giardia lamblia* cyst removal and 2.0-log virus removal for providing required treatment and conventional filtration.

RESPONSE: This is an implementation issue rather than a comment on the proposed rule. No changes to the rule language are requested or made. The department is reviewing information provided by the commenters and has also gathered information from other states. The outcome of the discussions will be shared promptly with all regional offices for consistency in implementing the rule. No changes to the rule are requested or made.

COMMENT #4: The representative of a public water system and an engineering firm also commented that the department should not require ground water systems to conduct daily temperature and pH monitoring in connection with compliance monitoring as indicated in the *Missouri Guidance Manual for Inactivation of Viruses in Ground*

Water, referred to in paragraph (1)(C)3. The manual states that temperature and pH tests should be performed and recorded daily. However, some ground water systems will experience virtually no temperature or pH change. Requiring these systems to test for and record these parameters on a daily basis is unreasonable and will have a tremendous and unnecessary financial impact on the water system. The rule itself does not require temperature and pH monitoring and such monitoring is unnecessary to demonstrate 4-log treatment of viruses. Ground water sources have relatively consistent temperature and pH. If any ground water source is suspected of having significant variations in temperature or pH, the department could easily establish minimum chlorine concentration or contact time that would address any such variations.

RESPONSE: These are implementation issues rather than comments on the proposed rule. No changes to the rule language are requested or made. The department is reviewing information provided by the commenters and has also gathered information from other states on their approaches to these difficult issues. The outcome of the discussions will be shared promptly with all regional offices for consistency in implementing the rule. No changes to the rule are requested or made.

COMMENT #5: The representative of a water industry association commented that paragraph (1)(C)3. refers to the *Missouri Guidance Manual for Inactivation of Viruses in Ground Water*. The commenter recognizes that the guidance manual is not incorporated by reference, therefore is not part of the regulation, but believes that the manual should not be referred to in the rule. The commenter further noted that the Regulatory Impact Report on this rule states that the department intends to incorporate the manual by reference. The commenter states that the federal rule does not require such guidance and believes this should be removed from the state rule. The commenter believes guidance manuals are for guidance and assistance in achieving compliance and not necessarily considered steadfast rules. If guidance manuals are to be incorporated into state regulations, the department should allow public comment on the manual prior to incorporation. Another commenter believes the manual is incorporated by reference and commented that it should not be.

RESPONSE AND EXPLANATION OF CHANGE: EPA requires in the federal Ground Water Rule (GWR) that states, as a condition of primacy, have a process to determine that a system achieves at least a 4-log treatment of viruses through inactivation, removal, or a combination of inactivation and removal. This requirement is specified in 40 CFR 142.16(o)(4)(i). PDWB is meeting that requirement with the *Missouri Guidance Manual for Inactivation of Viruses in Ground Water*. However, the commission agrees with the commenter that the guidance manual should not be referred to in the rule and has changed paragraph (1)(C)3. accordingly.

COMMENT #6: The representative of a water industry association commented that paragraphs (1)(C)5. and (4)(A)6. include the phrase "under the direction and approval of the department" which is not in the federal rule language. The commenter believe this makes the state rule more stringent than the federal rule. The commenter noted that in the public hearing the department testified that the proposed rule substantially adopts the EPA rule except for those items in the federal rule that EPA requires the state to define, such as significant deficiencies or positive *E. Coli* samples. The commenter believes the additional phrase in paragraphs (1)(C)5. and (4)(A)6. is not warranted and should be removed.

RESPONSE: In testimony at the public hearing the department specifically drew attention to this item and pointed out that the proposed rule requires department approval of the corrective action option the system selects. The proposed rule substantially adopts the federal rule. The two rules are not identical. This particular difference in language between the two rules was also pointed out in the Regulatory Impact Report and no comments were received. The department believes review and approval of the corrective action is

important and necessary in order to ensure the protection of public health, and also finds this is consistent with EPA's intent as expressed in the preamble to the federal rule (71 FR 65573, Nov. 8, 2006, pages 65605-06).

EPA received many comments on their proposed rule related to a state's ability to require a system to implement a specific treatment technique in response to significant deficiencies or source water fecal contamination. EPA's proposed GWR required the system only to consult with the state on the appropriate corrective action option. Several commenters on EPA's proposed rule expressed concern that with only a consultation requirement, a system could implement a treatment technique that the state would consider inappropriate or unreliable, such as disinfection by a system that is incapable of reliably operating a disinfection treatment system. To address these concerns, EPA intends for state plan review and permitting activities to ensure that systems implement the most appropriate corrective action. EPA's GWR requires states to identify in their primacy application their rules or other authorities to demonstrate that they can ensure that ground water systems take the appropriate corrective action. Authority to approve the corrective action option when a system has fecally contaminated water or significant deficiencies provides an additional safeguard for public health protection.

No change is made in response to the comment.

COMMENT #7: The representative of a water industry association commented that the definition of significant deficiency is buried in paragraph (1)(C)5. and recommends moving the definition to a stand-alone paragraph within section (1) to make it more prominent and easier to find.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with the comment and has made the requested change to subsection (1)(C).

COMMENT #8: The representative of an engineering firm commented that paragraph (1)(C)6. should be revised to state that only those ground water systems required by this rule to provide at least 4-log treatment of viruses are required to conduct compliance monitoring. The commenter pointed out that some public water systems have had problems in the past that may or may not have been related to ground water sources and were required by the department to install disinfection with 30-minute contact time (usually resulting in greater than 4-log disinfection) and subsequently have had no violations or water quality problems. As long as these systems continue to dispense water that meets microbiological water quality standards the department has no reason to be concerned for the public's health or the water quality, and these systems should not be required to perform 4-log treatment or compliance monitoring under the ground water rule.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with the comment and has made the requested change to subsection (1)(C). The systems would still have to meet the requirements of 10 CSR 60-4.055.

COMMENT #9: The representative of a water industry association commented that section (2) includes the phrase "and inspections" in several places in conjunction with sanitary surveys. The commenter believes this makes the state rule more stringent than the federal rule.

RESPONSE AND EXPLANATION OF CHANGE: The activity the U.S. EPA refers to as a sanitary survey is equivalent to an inspection in Missouri. In Missouri, as the commenter correctly notes, a sanitary survey is by definition a detailed engineering inspection performed by an environmental engineer. An inspection of a public water system can be, and usually is, performed by an environmental specialist under the review of an engineer. Adding "and inspections" to the state rule makes the rule consistent with the federal requirement and does not make the rule more stringent. It also provides the department with the necessary flexibility to include water system inspections that cover the eight required elements in the total "sanitary surveys" performed at public water systems for the purposes of

reporting to EPA. For surface water system inspections, wording was added to the state rule allowing a sanitary survey to be performed under the supervision of an engineer, as stated in 10 CSR 60-4.010, section (7), Inspections and Sanitary Surveys of Surface Water Systems. For consistency, the commission is amending subsection (2)(B) of the ground water rule to include the same wording as is found in the surface water requirement.

COMMENT #10: The representative of an engineering firm commented that only significant deficiencies directly related to ground water sources should be included in the proposed rule. The purpose of the Ground Water Rule, as specified in EPA guidance, is to identify ground water sources that are susceptible to fecal contamination and require those ground water systems to take corrective action to protect consumers. All significant deficiencies unrelated to ground water sources should be removed from paragraph (4)(A)4. Such deficiencies would be more appropriately located in the Total Coliform Rule.

RESPONSE: As a condition of primacy, the department is required to identify at least one significant deficiency in each of the eight areas that must be inspected: source; treatment; distribution system; finished water storage; pumps, pump facilities, and controls; monitoring, reporting, and data verification; system management and operation; and operator compliance. Significant deficiencies, by definition must cause or have the potential for causing the introduction of contamination into the water delivered to consumers. But, not all significant deficiencies will be directly related to the ground water source. No changes are made in response to the comment.

COMMENT #11: Representatives of a water industry association and a public water system commented that the list of significant deficiencies in paragraph (4)(A)4. is too broad and may be interpreted differently between the DNR regional offices. The intent of the federal rule is for each state to define those deficiencies that are most egregious and pose the most significant threat to public health. The proposed rule fails to do this and leaves the list open to mean anything the water system inspector wants to cite as significant. The list should be specific so systems will know, under the regulations, what is considered significant. One of the commenters offered, as an example, failure to achieve breakpoint chlorination could be interpreted as a significant deficiency. Another commenter stated that the department is, in essence, providing a method of enforcing elements of the *Design Guide for Community Water Systems* through the back door. The commenter believes this has the potential to be burdensome on the water system and pose an enforcement issue for the department. The commenter recommends changing the wording at the end of the paragraph (4)(A)4. to "Such significant deficiencies will include the following."

RESPONSE: Throughout the development of the list of significant deficiencies the department has continually worked toward simplifying and limiting the list to deficiencies that pose the most significant threat to public health. The department believes the current list does this while retaining flexibility to deal with unforeseen circumstances that threaten public health.

The department continually strives for consistency in water system inspections. The electronic inspection checklist (Electronic Sanitary Survey) now in use in all regions will control to some extent variations between the inspectors. Far from leaving the list of significant deficiencies open to mean anything the water system inspector wants to cite, deficiencies are coded as significant or other. When a significant deficiency is checked, a limited number of specific items will appear for the inspector to select. Training has been provided and will continue to be provided to the inspectors to further enhance consistency. However, the inspector's best professional judgement must also play a role in specific situations. The department has made no changes to its use or implementation of the *Design Guide for Community Water Systems*.

No changes are made to the rule in response to the comment.

COMMENT #12: The representative of a public water system commented that the 120-day time period in paragraph (4)(A)5. for correcting significant deficiencies could be unacceptable, for example if a major modification or capital investment is necessary.

RESPONSE: The 120-day time period is set by the federal rule and cannot be changed. However, the rule does take into account extenuating circumstances. Within 120 days, the system must either have completed corrective action OR be in compliance with a department-approved corrective action plan and schedule. No changes are needed in response to the comment.

Changes to the proposed rule are reprinted below.

10 CSR 60-4.025 Ground Water Rule Monitoring and Treatment Technique Requirements

(1) General Requirements and Applicability.

(C) General Requirements.

1. Systems subject to this rule must comply with sanitary survey information requirements described in section (2) of this rule.

2. Wherever it is used in this rule, the term “4-log treatment of viruses” shall mean treatment to at least ninety-nine and ninety-nine hundredths percent (99.99%) (4-log) treatment of viruses using inactivation, removal, or a department-approved combination of 4-log virus inactivation and removal before or at the first customer.

3. For the purposes of this rule, significant deficiencies include but are not limited to defects in design, operation, or maintenance, or a failure or malfunction of the sources, treatment, storage, or distribution system that the department determines are causing, or have the potential for causing, the introduction of contamination into the water delivered to consumers.

4. Systems subject to this rule must comply with microbial source water monitoring requirements for ground water systems that do not treat all of their ground water to at least ninety-nine and ninety-nine hundredths percent (99.99%) (4-log) treatment of viruses before or at the first customer as described in section (3) of this rule.

5. Systems subject to this rule must comply with treatment technique requirements, described in section (4) of this rule that apply to ground water systems that have fecally contaminated source waters, as determined by source water monitoring conducted under section (3) of this rule, or that have significant deficiencies that are identified by the department, or that are identified by the U.S. Environmental Protection Agency under section 1445 of the Safe Drinking Water Act. A ground water system with fecally contaminated source water or with significant deficiencies subject to the treatment technique requirements of this rule must implement one (1) or more of the following corrective action options under the direction and approval of the department:

- A. Correct all significant deficiencies;
- B. Provide an alternate source of water;
- C. Eliminate the source of contamination; or
- D. Provide treatment that reliably achieves at least 4-log treatment of viruses before or at the first customer.

6. Ground water systems that are required by this rule to provide at least 4-log treatment of viruses before or at the first customer are required to conduct compliance monitoring to demonstrate treatment effectiveness, as described in subsection (4)(B) of this rule.

7. If requested by the department, ground water systems must provide any existing information that will enable the department to perform a hydrogeologic sensitivity assessment. For the purposes of this rule, a hydrogeologic sensitivity assessment is a determination of whether ground water systems obtain water from hydrogeologically sensitive settings.

(2) Sanitary Surveys and Inspections for Ground Water Systems.

(B) For the purposes of this rule, a sanitary survey includes, but is not limited to, an onsite review, under the supervision of an engineer, of the water source(s) (identifying sources of contamination by using results of source water assessments or other relevant information where available), facilities, equipment, operation, maintenance, and

monitoring compliance of a public water system in order to evaluate the adequacy of the system, its sources and operations, and the distribution of safe drinking water.

Title 10—DEPARTMENT OF NATURAL RESOURCES Division 60—Safe Drinking Water Commission Chapter 5—Laboratory and Analytical Requirements

ORDER OF RULEMAKING

By the authority vested in the Safe Drinking Water Commission under section 640.100, RSMo Supp. 2009, the commission amends a rule as follows:

10 CSR 60-5.010 Acceptable and Alternate Procedures for Analyses is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 17, 2010 (35 MoReg 778). 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 Safe Drinking Water Commission held a public hearing on the proposed rulemaking on June 21, 2010. The department testified that the rulemaking updates analytical methods without adding to or changing federal requirements. No public comments were made at the hearing. The public comment period ended June 30, 2010, and no written comments were received. This amendment is adopted as proposed.

Title 10—DEPARTMENT OF NATURAL RESOURCES Division 60—Safe Drinking Water Commission Chapter 7—Reporting

ORDER OF RULEMAKING

By the authority vested in the Safe Drinking Water Commission under section 640.100, RSMo Supp. 2009, the commission amends a rule as follows:

10 CSR 60-7.010 Reporting Requirements is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 17, 2010 (35 MoReg 778-780). 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 Safe Drinking Water Commission held a public hearing on June 21, 2010. The department testified that the proposed amendment updates ground water system reporting requirements without adding to or changing the federal Ground Water Rule requirements. No public comments were made at the hearing. The public comment period ended June 30, 2010. No written comments were received. This amendment is adopted as proposed.

Title 10—DEPARTMENT OF NATURAL RESOURCES Division 60—Safe Drinking Water Commission Chapter 8—Public Notification

ORDER OF RULEMAKING

By the authority vested in the Safe Drinking Water Commission under section 640.100, RSMo Supp. 2009, the commission amends a rule as follows:

10 CSR 60-8.010 Public Notification of Conditions Affecting a Public Water Supply is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 17, 2010 (35 MoReg 781-784). 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 Safe Drinking Water Commission held a public hearing on the proposed rulemaking on June 21, 2010. The department testified that the proposed amendment updates public notification requirements for ground water systems. The department is proposing that these federal requirements be adopted without adding to or changing the federal Ground Water Rule requirements. No public comments were made at the hearing. The public comment period ended June 30, 2010. No written comments were received. This amendment is adopted as proposed.

**Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 60—Safe Drinking Water Commission
Chapter 8—Public Notification**

ORDER OF RULEMAKING

By the authority vested in the Safe Drinking Water Commission under section 640.100, RSMo Supp. 2009, the commission amends a rule as follows:

10 CSR 60-8.030 Consumer Confidence Reports is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 17, 2010 (35 MoReg 785-792). 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 Safe Drinking Water Commission held a public hearing on the proposed rulemaking on June 21, 2010. The department testified that the proposed amendment updates ground water system requirements for consumer confidence reports. The department is proposing that these federal requirements be adopted without adding to or changing the federal Ground Water Rule requirements. No public comments were made at the hearing. The public comment period ended June 30, 2010. No written comments were received. This amendment is adopted as proposed.

**Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 60—Safe Drinking Water Commission
Chapter 9—Record Maintenance**

ORDER OF RULEMAKING

By the authority vested in the Safe Drinking Water Commission under section 640.100, RSMo Supp. 2009, the commission amends a rule as follows:

10 CSR 60-9.010 Requirements for Maintaining Public Water System Records is amended.

A notice of proposed rulemaking containing the text of the proposed

amendment was published in the *Missouri Register* on May 17, 2010 (35 MoReg 793). 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: At the public hearing on June 21, 2010, the department testified that the proposed amendment covers record-keeping requirements required by the federal Ground Water Rule. The department is proposing to adopt these federal requirements without adding to or changing the federal requirements. No public comments were made at the hearing. The public comment period ended June 30, 2010. No written comments were received. This amendment is adopted as proposed.

**Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 45—Missouri Gaming Commission
Chapter 9—Internal Control System**

ORDER OF RULEMAKING

By the authority vested in the Missouri Gaming Commission under section 313.805, RSMo Supp. 2009, the commission adopts a rule as follows:

11 CSR 45-9.115 Minimum Internal Control Standards—Section O is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on July 1, 2010 (35 MoReg 975). No changes have been made to 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 was held on this proposed rule on August 11, 2010, and the public comment period ended on July 31, 2010. No comments were received.

**Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 2—Income Tax**

ORDER OF RULEMAKING

By the authority vested in the director of revenue under section 143.784.5, RSMo 2000, the director adopts a rule as follows:

12 CSR 10-2.250 Reciprocal Agreements with Other States for Tax Refund Offsets is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on July 15, 2010 (35 MoReg 1029). No changes have been made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

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

ORDER OF RULEMAKING

By the authority vested in the MO HealthNet Division under sections 208.159, 208.164, and 210.924, RSMo 2000, and sections 208.153 and 208.201, RSMo Supp. 2009, the division amends a rule as follows:

13 CSR 70-3.020 Title XIX Provider Enrollment is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on July 1, 2010 (35 MoReg 977-980). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

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

ORDER OF RULEMAKING

By the authority vested in the MO HealthNet Division under section 208.201, RSMo Supp. 2009, the division amends a rule as follows:

**13 CSR 70-3.140 Direct Deposit of Provider Reimbursement
is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on July 1, 2010 (35 MoReg 980). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

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

ORDER OF RULEMAKING

By the authority vested in the MO HealthNet Division under sections 208.153 and 208.201, RSMo Supp. 2009, the division amends a rule as follows:

**13 CSR 70-3.160 Electronic Submission of MO HealthNet
Claims and Electronic Remittance Advices is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on July 1, 2010 (35 MoReg 980-982). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—MO HealthNet Division
Chapter 91—Personal Care Program**

ORDER OF RULEMAKING

By the authority vested in the MO HealthNet Division under sections 208.153 and 208.201, RSMo Supp. 2009, the division rescinds a rule as follows:

13 CSR 70-91.030 Personal Care Assistance is rescinded.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on July 15, 2010 (35 MoReg 1029). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 16—RETIREMENT SYSTEMS
Division 50—The County Employees' Retirement Fund
Chapter 2—Membership and Benefits**

ORDER OF RULEMAKING

By the authority vested in the County Employees' Retirement Fund Board of Directors under section 50.1032, RSMo 2000, the board amends a rule as follows:

16 CSR 50-2.010 Definitions is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on July 15, 2010 (35 MoReg 1029-1030). 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 16—RETIREMENT SYSTEMS
Division 50—The County Employees' Retirement Fund
Chapter 2—Membership and Benefits**

ORDER OF RULEMAKING

By the authority vested in the County Employees' Retirement Fund Board of Directors under section 50.1032, RSMo 2000, the board amends a rule as follows:

16 CSR 50-2.020 Employee Contributions is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on July 15, 2010 (35 MoReg 1030). 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 16—RETIREMENT SYSTEMS
Division 50—The County Employees' Retirement Fund
Chapter 2—Membership and Benefits**

ORDER OF RULEMAKING

By the authority vested in the County Employees' Retirement Fund Board of Directors under section 50.1032, RSMo 2000, the board amends a rule as follows:

16 CSR 50-2.030 Eligibility and Participation is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on July 15, 2010 (35 MoReg 1030-1031). 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 16—RETIREMENT SYSTEMS
Division 50—The County Employees' Retirement Fund
Chapter 2—Membership and Benefits**

ORDER OF RULEMAKING

By the authority vested in the County Employees' Retirement Fund Board of Directors under section 50.1032, RSMo 2000, the board amends a rule as follows:

16 CSR 50-2.050 Certifying Service and Compensation is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on July 15, 2010 (35 MoReg 1031). 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 16—RETIREMENT SYSTEMS
Division 50—The County Employees' Retirement Fund
Chapter 2—Membership and Benefits**

ORDER OF RULEMAKING

By the authority vested in the County Employees' Retirement Fund Board of Directors under section 50.1032, RSMo 2000, the board amends a rule as follows:

16 CSR 50-2.110 Rehires is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on July 15, 2010 (35 MoReg 1031). 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 16—RETIREMENT SYSTEMS
Division 50—The County Employees' Retirement Fund
Chapter 3—Creditable Service**

ORDER OF RULEMAKING

By the authority vested in the County Employees' Retirement Fund Board of Directors under section 50.1032, RSMo 2000, the board amends a rule as follows:

16 CSR 50-3.010 Creditable Service is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on July 15, 2010 (35 MoReg 1031-1032). 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 500—Property and Casualty
Chapter 10—Mortgage Guaranty Insurance**

ORDER OF RULEMAKING

By the authority vested in the director of the Department of Insurance, Financial Institutions and Professional Registration under section 374.045, RSMo Supp. 2009, the director amends a rule as follows:

20 CSR 500-10.200 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 17, 2010 (35 MoReg 793-794). The section with changes 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 regarding this proposed amendment was held June 17, 2010, and the public comment period ended June 24, 2010. At the public hearing, Division of Insurance Company Regulation staff explained the proposed amendment and three (3) public comments were made. Time for additional comments was extended and four (4) additional public comments were submitted in writing. A public meeting took place on August 5, 2010, to allow for discussion of the proposed amendment and submitted comments.

COMMENT #1: Heidi Heyrman, with Mortgage Guarantee Insurance Corporation, commented in favor of the proposed amendment.
RESPONSE: No change was made as a result of this comment.

COMMENT #2: Richard Brownlee, with Polsinelli Shughart, LLC, commented in favor of the amendment and submitted two (2) exhibits. The first exhibit was a list of states that have a similar 25:1 ratio requirement that have made similar changes to this amendment. The second exhibit submitted by Mr. Brownlee was a written comment from Elizabeth J. Mendenhall, with Missouri Association of Realtors, expressing her support of the proposed amendment.
RESPONSE: No change was made as a result of this comment.

COMMENT #3: Harry Gallagher, on behalf of Mortgage Bankers Association of Missouri, requested additional time to submit comments on this amendment. Mr. Gallagher submitted additional written comments on June 30, 2010, stating that the amendment should be changed to include a requirement to consult the Missouri Commissioner of Finance, who could have access to the case file, and that the entire record of any proceeding be open to the Missouri Sunshine Act.
RESPONSE: No changes were made as a result of this comment as the changes made as a result of comments #4, #5, and #7 were adequate to address Mr. Gallagher's concerns.

COMMENT #4: Roshara J. Holub, with Missouri Credit Union Association, submitted a written comment on July 2, 2010, requesting

COMMENT #4: Roshara J. Holub, with Missouri Credit Union Association, submitted a written comment on July 2, 2010, requesting

that any waivers be published on the department's website, expressing concern over no provision for bringing the liability back in line with the current rule, and suggested adding a schedule for reviewing the waiver over time to determine if it should remain in effect.

RESPONSE AND EXPLANATION OF CHANGE: As a result of this comment, and comments #5 and #7, this amendment will be changed to state that the requirements may be suspended for a period of time of up to two (2) years and that such suspension of the requirements will be made by order of the director, which shall be open to public inspection.

COMMENT #5: Max Cook, with Missouri Bankers Association, submitted a written comment on July 2, 2010, requesting that the amendment be changed to include that when a waiver is granted that information should be an open record under the Missouri Sunshine Act, that the mortgage insurance company should be required to submit a Corrective Restoration Plan to return to the 25:1 ratio, that there should be a definite time period for a company to re-establish the 25:1 ratio, and that there be a floor beyond which a ratio cannot be adjusted.

RESPONSE AND EXPLANATION OF CHANGE: As a result of this comment, and comments #4 and #7, this amendment will be changed to state that the requirements may be suspended for a period of time of up to two (2) years and that such suspension of the requirements will be made by order of the director, which shall be open to public inspection.

COMMENT #6: Suzanne C. Hutchinson, with Mortgage Insurance Companies of America, submitted a written comment on July 9, 2010, stating that the department has the authority and ability to assess the safety and soundness of mortgage insurers when considering application of this amendment and that much of the information submitted when requesting a suspension of the requirements as contemplated by this amendment would be records protected from disclosure by law and therefore releasing those records would be inappropriate under the Missouri Sunshine Law.

RESPONSE: As this comment was made in support of the amendment; no change was made as a result of this comment.

COMMENT #7: A discussion took place at a public meeting at the department regarding this amendment involving all parties who had previously commented on this amendment. After the discussion, parties agreed that the amendment should include that the suspension of requirements should be for a period of time of up to two (2) years and that the suspension of requirements order should be open for public inspection.

RESPONSE AND EXPLANATION OF CHANGE: As a result of this comment, and comments #4 and #5, this amendment will be changed to state that the requirements may be suspended for a period of time of up to two (2) years and that such suspension of the requirements will be made by order of the director, which shall be open to public inspection.

20 CSR 500-10.200 Financial Regulation

(3) Limit of Aggregate Liability. Unless a request to suspend the requirements in this section is granted by the director as set forth below, a mortgage guaranty company at any time shall not have outstanding a total liability under its aggregate insurance policies exceeding twenty-five (25) times its policyholders' surplus, this liability to be computed on the basis of the company's liability under its election as provided in subsection (2)(D). Subject to a suspension, which may be granted by the director, in the event that any company has outstanding total liability exceeding twenty-five (25) times its policyholders' surplus, it shall cease transacting new business until a time as its total liability no longer exceeds twenty-five (25) times its policyholders' surplus. Upon the request of a mortgage guaranty company, the director may suspend the requirements in this section

for a period of time of up to two (2) years per request and under such conditions as the director may order. Any suspension of the requirements in this section shall be made by order of the director, which shall be open to public inspection.

This section may contain notice of hearings, correction notices, public information notices, rule action notices, statements of actual costs, and other items required to be published in the *Missouri Register* by law.

**Title 19—DEPARTMENT OF HEALTH AND
SENIOR SERVICES**

**Division 60—Missouri Health Facilities Review Committee
Chapter 50—Certificate of Need Program**

**NOTIFICATION OF REVIEW
APPLICATION REVIEW SCHEDULE**

The Missouri Health Facilities Review Committee has initiated review of the expedited application listed below. A decision is tentatively scheduled for November 23, 2010. This application is available for public inspection at the address shown below.

Date Filed

Project Number: Project Name
City (County)
Cost, Description

10/12/10

#4564 HT: Barnes-Jewish Hospital
St. Louis (St. Louis City)
\$1,420,875, Replace computerized tomography scanner

Any person wishing to request a public hearing for the purpose of commenting on this application must submit a written request to this effect, which must be received by November 11, 2010. All written requests and comments should be sent to:

Chairman
Missouri Health Facilities Review Committee
c/o Certificate of Need Program
3418 Knipp Drive, Suite F
Post Office Box 570
Jefferson City, MO 65102

For additional information, contact
Donna Schuessler, (573) 751-6403.

STATUTORY LIST OF CONTRACTORS BARRED FROM PUBLIC WORKS PROJECTS

The following is a list of contractor(s) who have been prosecuted and convicted of violating the Missouri Prevailing Wage Law and whose Notice of Conviction has been filed with the Secretary of State pursuant to section 290.330, RSMo. Under this statute, no public body is permitted to award a contract, directly or indirectly, for public works 1) to Michael B. Robin, 2) to any other contractor or subcontractor that is owned, operated, or controlled by Mr. Robin, including Plumbco, Inc., or 3) to any other simulation of Mr. Robin or of Plumbco, Inc., for a period of one (1) year, or until December 17, 2010.

Name of Contractor	Name of Officers	Address	Date of Conviction	Debarment Period
Michael B. Robin DBA Plumbco, Inc. Case No. 09AO-CR01174		7534 Heron Drive Neosho, MO 64804	12/17/09	12/17/2009-12/17/2010