

Missouri Clean Water Commission Meeting
Department of Natural Resources
Lewis and Clark State Office Building
1101 Riverside Drive
Jefferson City, Missouri 65102

April 6, 2016

**Proposed Amendment to
10 CSR 20-6.300 Concentrated Animal Feeding Operations Regulation
Public Hearing**

Issue: Public Hearing on the Proposed Amendment to 10 CSR 20-6.300 Concentrated Animal Feeding Operations Regulation.

Background: The primary purpose of the rulemaking is to assure that 10 CSR 20-6.300 is consistent with state statute amendments enacted August 28, 2013 by House Bill 28. In addition to the changes resulting from the state statute amendment, the rule making proposes minor revisions to definitions and language.

Revisions to 10 CSR 20-6.300 that have been identified and proposed for rulemaking include:

- 1) Update of regulatory definitions.
- 2) Incorporation of the construction permit exemption.
- 3) Modifications to the operating permit process regarding neighbor notice and application requirements.
- 4) Incorporation of changes to inspection requirements for wet flush facilities.

Recommended Action: Hearing only. This is an opportunity for staff, and the public, to present and comment on the Proposed Amendment to 10 CSR 20-6.300 Concentrated Animal Feeding Operations Regulation.

Suggested Motion Language: Hearing only.

List of Attachments:

- Proposed rule 10 CSR 20-6.300 Concentrated Animal Feeding Operations Regulation published in the Missouri Register on March 1, 2016

filed as 5 CSR 50-345.200. Original rule filed June 30, 2004, effective Jan. 30, 2005. Moved to 5 CSR 20-100.180, effective Aug. 16, 2011. Rescinded: Filed Jan. 25, 2016.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Department of Elementary and Secondary Education, Attn: Jocelyn Strand, Coordinator, School Improvement, PO Box 480, Jefferson City, MO 65102-0480 or email msip@dese.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 20—Clean Water Commission
Chapter 6—Permits**

PROPOSED AMENDMENT

10 CSR 20-6.300 Concentrated Animal Feeding Operations. The director proposes to amend the purpose and sections (1)–(6).

PURPOSE: This proposed amendment is necessary as a result of changes in section 644.052, RSMo, effective August 28, 2013. In addition, staff are proposing minor revisions to definitions and language.

[PURPOSE: This rule sets forth the permitting and other requirements for concentrated animal feeding operations. Minimum federal requirements are incorporated and additional state requirements are included to provide increased environmental protection of sensitive watersheds. This rule consolidates requirements for animal feeding operations from other Chapter 6 rules. Section (5) of this rule contains the letter of approval application procedures which were previously under sections (4)–(10) of 10 CSR 20-6.015.]

PURPOSE: This rule sets forth the requirements and procedures for operating permits for concentrated animal feeding operations. Minimum federal requirements are incorporated, and additional state requirements are included to provide increased environmental protection of sensitive watersheds.

(1) Definitions.

(A) Definitions as set forth in 10 CSR 20-2.010 and 10 CSR 20-8.300 shall apply to the terms when used in this rule unless otherwise defined in subsection (B) below.

(B) Other applicable definitions are incorporated as follows:

1. Animal—Domestic animals, fowls, or other types of livestock except for aquatic animals;

2. Animal unit—A unit of measurement to compare various animal types at an animal feeding operation. One (1) animal unit equals the following: 1.0 beef cow or feeder, cow/calf pair, veal calf, or dairy heifer; 0.5 horse; 0.7 mature dairy cow; 2.5 swine weighing over 55 pounds; 10 swine weighing less than 55 pounds; 10 sheep, lamb, or meat and dairy goats; 30 chicken laying hens or broilers with a wet handling system; 82 chicken laying hens without a wet handling system; 55 turkeys in grow-out phase; 125 chicken broilers, chicken pullets, or turkey poults in brood phase without a wet handling system;

3. Animal unit equivalent—Any unique animal type, not listed,

that has a similar manure characteristic as one (1) of the listed animal unit categories. The department shall make the determination of an animal unit equivalent based upon manure characteristics that include manure volume and nutrient concentration;

4. Animal feeding operation (AFO)—A lot, building, or complex at an operating location where animals are stabled or confined and fed or maintained for a total of forty-five (45) days or more in any twelve- (12-) month period, and crops, vegetation, forage growth, or post-harvest residues cannot be sustained over at least fifty percent (50%) of the animal confinement area within the normal crop growing season;

5. Catastrophic storm event—A precipitation event of twenty-four- (24-) hour duration that exceeds the twenty-five- (25-) year, twenty-four- (24-) hour storm event as defined by the most recent publication of the National Weather Service Climate Atlas;

6. Chronic weather event—The chronic weather event will be based upon an evaluation of the [one-in-] ten ([1-in-]10) year return rainfall frequency over a ten- (10-) day, ninety- (90-) day, one hundred eighty- (180-) day, and three hundred sixty-five- (365-) day operating period. It is preferred the University of Missouri's Missouri Climate Center will determine, within a reasonable time frame, when a chronic weather event is occurring for any given county in the state;

7. Class I and Class II operation—An AFO or CAFO's class size is based on the operating level in animal units of an individual animal type at one (1) operating location. Once a CAFO becomes a Class I operation, the animal units of all confined animals at the operating location are summed to determine whether the operation is Class IA, IB, or IC. Operations that are smaller than the Class II category are considered unclassified. The class categories, sorted by animal type, are presented in the following chart:

1 Animal Unit =

1.0	Beef cow[s], feeder [cattle], veal [calves] calf, [and] cow/calf pair[s], and dairy heifer	10	Sheep, lambs, and meat and dairy goats
0.5	Horses	30	Chicken laying hens, pullets, and broilers with a wet handling system
0.7	Mature [d/Dairy cows		
2.5	Swine weighing over 55 pounds	55	Turkeys in growout phase
10	Swine weighing [less than] under 55 pounds	82	Chicken laying hens without a wet handling system
5	Ducks with a wet handling system	125	Chicken broilers and pullets, and turkey poults in brood phase, all without a wet handling system
300	Ducks without a wet handling system		

Animal Class Category

Animal Class Category	Class IA 7,000 AUs*	Class IB 3,000 to 6,999 AUs*	Class IC 1,000 to 2,999 AUs*	Class II 300 to 999 AUs*
Beef cows, feeder cattle, veal calves, [and] cow/calf pairs, and dairy heifers	7,000	3,000 to 6,999	1,000 to 2,999	300 to 999
Horses	3,500	1,500 to 3,499	500 to 1,499	150 to 499
Mature [d/Dairy [c/Cows	4,900	2,100 to 4,899	700 to 2,099	200 to 699
Swine weighing over 55 [lbs.] pounds	17,500	7,500 to 17,499	2,500 to 7,499	750 to 2,499
Swine weighing under 55 [lbs.] pounds	70,000	30,000 to 69,999	10,000 to 29,999	3,000 to 9,999
Sheep, lambs, and meat and dairy goats	70,000	30,000 to 69,999	10,000 to 29,999	3,000 to 9,999
Chicken laying hens, pullets, and broilers with a wet handling system	210,000	90,000 to 209,999	30,000 to 89,999	9,000 to 29,999
Chicken laying hens without a wet handling system	574,000	246,000 to 573,999	82,000 to 245,999	24,165 to 81,999
Turkeys in growout phase	385,000	165,000 to 384,999	55,000 to 164,999	16,500 to 54,999
Chicken broilers and pullets, and turkey poults in brood phase, all without a wet handling system	875,000	375,000 to 874,999	125,000 to 374,999	37,500 to 124,999
Ducks without a wet handling system	210,000	90,000 to 209,999	30,000 to 89,999	10,000 to 29,999
Ducks with a wet handling system	35,000	15,000 to 34,999	5,000 to 14,999	1,500 to 4,999

*Animal Units [AUs]

8. Concentrated animal feeding operation (CAFO)—An AFO that meets one (1) of the following criteria:

A. Class I operation;

B. Class II operation where either one (1) of the following conditions are met:

(I) Pollutants are discharged *directly* into waters of the state through a manmade ditch, flush system, or other similar man-made device; or

(II) Pollutants are discharged directly into waters of the state which originate outside of and pass over, across, or through the production area or otherwise come into contact with the animals confined in the operation; or

C. An unclassified operation that is designated as a CAFO in accordance with subsection (2)(D) of this rule;

9. Critical watersheds—defined as the following:

A. Watersheds for public drinking water lakes (L1 lakes defined in 10 CSR 20-7.031 and identified in Table G);

B. Watersheds located upstream away from the dam from all drinking water intake structures on lakes including the watershed of Table Rock Lake;

C. Areas in the watershed and within five (5) miles upstream of any stream or river drinking water intake structure, other than those intake structures on the Missouri and Mississippi Rivers; and

D. Watersheds of the Current (headwaters to Northern Ripley County Line), Eleven Point (headwaters to Hwy. 142), and Jacks Fork (headwaters to mouth) Rivers;

10. Discharge—A CAFO is said to discharge when it is designed, constructed, operated, or maintained such that a discharge of process waste to surface waters of the state will occur. *[This does not include CAFOs that merely have the potential to discharge to waters of the state.]* A CAFO that discharges could include one (1) that continuously discharges process wastewater to surface waters of the state, as well as one that may only have an intermittent and sporadic discharge. Discharges of agricultural storm water is a nonpoint source and therefore not included within this definition;

11. Dry process waste—A process waste mixture which may include manure, litter, or compost (including bedding, compost, mortality by-products, or other raw materials which is commingled with manure) and has less than seventy-five percent (75%) moisture content and does not contain any free draining liquids;

12. Flush system—Any animal waste moving or removing system utilizing the force of periodic liquid flushing as the primary mechanism for removing manure from animal containment buildings, as opposed to a primarily mechanical or automatic device. This definition does not include confinement buildings that utilize deep or shallow underfloor pits with pull plug devices;

13. Land application area—Agricultural land which is under the operational control of the CAFO owner or operator, whether it is owned, rented, or leased, to which manure, litter, or process wastewater from the production area is or may be applied;

14. Multi-year phosphorus application—Phosphorus applied to a field in excess of the crop needs for that year. When multi-year phosphorus applications are followed, no additional manure, litter, or process wastewater is applied to the same land in subsequent years until the applied phosphorus has been removed from the field via harvest and crop removal or until subsequent soil testing allows for nitrogen-based rates;

15. No-discharge operation—A CAFO is considered no-discharge if the operation is designed, constructed, operated, and maintained in a manner such that the CAFO will not discharge to waters of the state. A discharge of agricultural storm water is a nonpoint source and therefore not included within this definition;

16. Occupied residence—A residential dwelling which is inhabited at least fifty percent (50%) of the year;

17. Operating location—For purposes of determining CAFO classification, an operating location includes all contiguous lands owned, operated, or controlled by one (1) person or by two (2) or more persons jointly or as tenants in common or noncontiguous lands if they

use a common area for the land application of wastes. State and county roads are not considered property boundaries for purposes of this rule. Two (2) or more animal feeding operations under a common ownership are considered to be a single animal feeding operation if they adjoin each other or if they use a common area for the land application of wastes;

18. Overflow—The discharge of process wastewater resulting from the filling of wastewater or manure storage structures beyond the point at which no more manure, process wastewater, or stormwater can be contained by the structure;

19. Process wastewater—Water which carries or contains manure, including manure commingled with litter, compost, or other animal production waste materials used in the operation of the CAFO. Also includes water directly or indirectly used in the operation of the CAFO for any or all of the following: spillage or overflow from confined animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other CAFO facilities; and water resulting from the washing, or spray cooling of confined animals. **Process wastewater also includes any water which comes into contact with any raw materials, products, or by-products feed, milk, eggs, or bedding;**

20. Production area—The non-vegetated portions of an operation where manure, litter, or process wastewater from the AFO is generated, stored, and/or managed. The production area includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas. The animal confinement area includes, but is not limited to, open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes, but is not limited to, lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes, but is not limited to, feed and silage, silos, pads, and bunkers, **and bedding materials.** The waste containment area includes, but is not limited to, settling basins and areas within berms and diversions which separate uncontaminated storm water. Also included in the definition of production area is any egg washing or egg processing operation and any area used in the storage, treatment, or disposal of animal mortalities;

21. Public building—A building open to and used routinely by the public for public purposes;

22. Vegetated buffer—A narrow, permanent strip of dense perennial vegetation established parallel to the contours of and perpendicular to the dominant slope of the field for the purposes of slowing water runoff, enhancing water infiltration, and minimizing the risk of any potential nutrients or pollutants from leaving the field and reaching surface waters; *and*

23. Waste management system—**Includes all structures and equipment, used to collect, store, transfer or treat, manure, litter, and/or process waste water. A waste management system will be considered in operation when animals are placed in confinement; and**

23./24. Wet handling system—Wet handling system is the handling of process wastewater that contains more than seventy five percent (75%) moisture content or has free draining liquids. A wet handling system includes, but is not limited to, lagoons, pits, tanks, all gravity outfall lines, recycle pump stations, recycle force mains, and appurtenances.

(2) Applicability and Application for Coverage.

(A) Scope of Rule. This rule applies solely to manure, litter, and/or process wastewater management systems at concentrated animal feeding operations (CAFOs). CAFOs are point sources, and are subject to both state and federal National Pollutant Discharge Elimination System (NPDES) regulations in accordance with sections 640.710 and 644.026, RSMo.

(B) Permit Coverage Required—Any CAFO owner or operator *[that proposes the construction, modification, expansion, and/or*

operation of a manure, litter, and/or process) shall obtain one (1) of the operating permits listed below prior to operating a waste(water) management system at a concentrated animal feeding operation [shall obtain one (1) or more of the following permits listed below] unless otherwise exempted under subsection (2)(E) of this rule./:

[1. Construction permit—All existing or proposed Class I CAFOs must obtain a construction permit prior to the initial construction, installation, modification, or expansion of a manure, litter, or process wastewater management system.]

[2.]1. NPDES general or site-specific operating permits—Owners or operators of Class I CAFOs that discharge and Class II AFOs that are defined or designated as a CAFO, must obtain a [state] NPDES operating permit [before any discharge occurs]. Class I CAFOs that do not discharge may also apply for coverage under an NPDES operating permit./:

[3.]2. State no-discharge operating permit—Owners or operators of Class I CAFOs that do not [intend to] discharge [or propose to discharge] and do not apply for coverage under a [state] NPDES operating permit shall obtain and maintain coverage under a state no-discharge operating permit. [Compliance with a state no-discharge permit will provide a CAFO “No-Discharge Certification” in accordance with 40 CFR 122.23(i) and (j) July 1, 2009, without any later amendments or additions, as published by the Office of the Federal Register, National Archives and Records Administration, Superintendent of Documents, Pittsburgh, PA 15250-7954.]

[(C) Voluntary Permit Coverage—Any owner or operator of a Class II or smaller AFO, which is not otherwise designated as a CAFO, may on their own behalf elect to be covered under one (1) of the above three (3) permits. Any person making such an election will be subject to all terms and conditions of the permit unless and until permit coverage is terminated.]

[(D)](C) CAFO Designation at Class II Size AFOs.

1. The department may designate an AFO as a concentrated animal feeding operation upon determining that it is a significant contributor of pollutants to waters of the state. In making such designation, the department shall consider the following factors:

- A. The size of the AFO and the amount of wastes reaching waters of the state;
- B. The location of the AFO relative to waters of the state;
- C. The means of conveyance of animal wastes and process waste into waters of the state;
- D. The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes manure and process waste into waters of the state; and
- E. Other relevant factors.

2. No AFO shall be designated under this section unless the department has conducted an on-site inspection of the operation and determined that the operation should and could be regulated as a concentrated animal feeding operation. In addition, no AFO with number of animals below a Class II size operation may be designated as a CAFO unless—

- A. Pollutants are discharged into waters of the state through a manmade ditch, flushing system, or other similar manmade device; or
- B. Pollutants are discharged directly into the waters of the state which originate outside of the AFO and pass over, across, or through the AFO, or otherwise come into direct contact with the animals confined in the operation.

[(E)](D) Exemptions.

[1. Pilot projects or demonstration projects for beneficial use may receive construction permit exemption by written approval from the department. An operating permit application shall be submitted at least ninety (90) days prior to end of the demonstration period if the operation intends to continue use of the pilot project.

2. Construction permits are not required for the construction or alteration of mortality composters or other stor-

age buildings for dry process waste when the compost operation or dry process waste storage is located within a roofed building and the storage floor complies with the requirements in 10 CSR 20-8.300.

3. Construction permits are not required for minor piping changes and other modifications include, but are not limited to, small sections of buried wastewater lines, normal repair or replacement of existing wastewater lines, installation of manholes, wet wells, and other changes that do not significantly impact the normal operation of the waste management system./

[4.]1. In accordance with section 640.758, RSMo, livestock markets and auctions are exempt from the provisions of 10 CSR 20-6.300(3)(B)–(C), 10 CSR 20-6.300(3)(H), and 10 CSR 20-6.300(7).

[5.]2. Permits are not required for nonpoint source discharges, agricultural stormwater discharges, and return flows from irrigated agriculture. A precipitation related discharge of manure, litter, or process wastewater from land application areas under the control of a CAFO is considered an agricultural stormwater discharge when manure, litter, or process wastewater is applied in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater.

[6. If a construction permit is waived by the department, or for some other reason not required, part or all of the information necessary to issue a construction permit may be required with the application for the operating permit.]

[(F)](E) [Construction and] Operating Permit Applications. This section describes the application process and requirements for CAFO [construction and general NPDES and state no-discharge] operating permits. A separate application for each operating location must be submitted to the department.

[1. An application for a construction permit shall include the permit application documents required within the CAFO manure storage design rule at 10 CSR 20-8.300. The construction application shall also include the application for an operating permit along with all applicable permit fees. The department may require other information as necessary to determine compliance with the Missouri Clean Water Law and these regulations.

2. An operating permit application for an AFO that did not previously have a construction permit or letter of approval (LOA) shall include the permit application documents required within the CAFO manure storage design rule at 10 CSR 20-8.300.

3. All construction permit applications shall require engineering documents along with a professional engineer’s seal affixed to such documents in accordance with 10 CSR 20-8.300.]

[4.]1. The department will not examine the adequacy or efficiency of the structural, mechanical, or electrical components of the [manure] waste management systems, only adherence to rules and regulations. The issuance of permits will not include approval of such features.

2. Applications for general operating permits should be submitted at least ninety (90) days prior to the start of operation. Applications for site-specific operating permits shall be submitted at least one hundred eighty (180) days prior to the start of operation. The application shall include at a minimum the following documents:

A. Title page of engineering report or similar document including name of the operation, date the report was prepared, name and address of firm preparing the report, seal and signature of the engineer, and a statement indicating the project was designed in accordance with 10 CSR 20-8.300 and 10 CSR 20-6.300;

B. Narrative project summary. This shall describe the existing and any proposed modifications to operating conditions

including the number of confinement buildings or areas, the total design capacity in animal units and actual animal numbers for each type of animal, and an explanation of the existing and/or proposed modifications to the waste management system;

C. Include the amount of manure generated annually, storage volume, and days of storage of all manure storage structures, including mortality composters;

D. A recent aerial or topographic map showing the extent of the production area including;

(I) All existing and proposed confinement buildings, open lots, manure storage structures;

(II) Surface waters and areas subject to a one hundred (100) year flood event within or adjacent to the production area; and

(III) Production area setback distances in accordance with 10 CSR 20-8.300(5)(B);

E. Nutrient Management Plan—

(I) NPDES permit – applications shall include the operations' nutrient management plan; or

(II) State no-discharge permit – applications for a new permit shall include the operations' nutrient management plan;

F. Applications for Class I CAFOs shall also include:

(I) An aerial or topographic map that meets the requirement of 10 CSR 20-6.300(3)(C)4.;

(II) Proof of neighbor notice to all parties listed in 10 CSR 20-6.300(3)(C)2.

3. For renewal of NPDES operating permits, a copy of the operations nutrient management plan shall be submitted if it has not previously been submitted.

[5. An application for a construction permit should be submitted to the department at least one hundred eighty (180) days in advance of the date on which the proposed construction will begin. A separate application for each operating location must be submitted to the department.]

[6.]4. When an application is submitted incomplete [and missing key components,] or any of the required permit documents are deficient, or if additional information is needed including, but not limited to, engineering design plans, the department will act in one (1) of the following ways:

A. *[t]The department may return the entire permit application back to the applicant for re-submittal[.]; or*

B. *[When an application is submitted sufficiently complete, but is otherwise deficient, t]The applicant and/or the applicant's engineer will be notified of the deficiency and will be provided time to address department comments and submit corrections. Processing of the application may be placed on hold until the applicant has corrected identified deficiencies.*

[7.]5. Applicants who fail to correct deficiencies and/or fail to satisfy all department comments after two (2) certified department comment letters shall have the application returned as incomplete and the [construction and operating] permit fee(s) shall be forfeited. The department will grant reasonable time extensions when the applicant requests additional time to respond to department comments, however, such requests must be in writing and must occur within the time frame set by the department.

[8.]6. When the department has received all documents and information necessary for a properly completed [construction] operating permit application, including appropriate permit fees, the department will, [upon completion of the] review the application and [approval of] said documents[,] for compliance with this regulation and 10 CSR 20-8.300 and, if met, act in one (1) of the following ways:

A. For an operation seeking coverage under the state no-discharge general operating permit the department will issue *[both the construction and] the state no-discharge general operating permit [concurrently]; or*

B. For an operation seeking coverage under the NPDES operating permit the department will post for fifteen (15) days on the

department's webpage a notice of the pending CAFO NPDES permit. The notice will include an announcement of the opportunity for public review and comment on *[a] the CAFO's nutrient management plan and draft NPDES permit. [The public may request, in writing, a fifteen- (15-) day extension to the public notice period for a permit.]* The department will *[post the public notice of a pending CAFO NPDES permit and] consider all comments before issuing the [construction and] operating permit. [The construction and NPDES operating permit will be issued concurrently. A public notice will not be required prior to the issuance of a construction permit for a manure or wastewater pipeline or land application system.]*

[9. Construction permits shall expire one (1) year from the date of issuance unless the permittee applies for an extension. The department shall extend construction permits only one (1) time for a period not to exceed the originally issued effective period. An applicant requesting extension shall show that there have been no substantial changes in the original project. Extension requests should be received thirty (30) days prior to permit expiration.

10. When a construction permit is issued for a project for which the construction period is known in advance to require longer than one (1) year from the date of issuance, the department may issue a permit allowing a period of time greater than one (1) year upon the applicant showing that the period of time is necessary and that no substantial changes in the project will be made without first notifying the department. If there are substantial changes, the department may require the applicant to apply for a new construction permit.

11. Upon completion of construction and prior to the expiration date of the construction permit, the owner or operator for which a construction permit was issued, shall submit in writing on forms approved by the department the engineering certification of the newly constructed systems. Engineering certification will document that the project was completed in accordance with approved plans and specifications. If changes were made during construction, as-built drawings of said changes shall be submitted with the certification in accordance with 10 CSR 20-8.300.]

(3) Operating Permit Requirements. These requirements apply to all operating permits unless otherwise specified.

(A) General Requirements.

1. All operating permits required by this rule shall be issued in accordance with applicable provisions of 10 CSR 20-6.010, 10 CSR 20-6.011, 10 CSR 20-6.020, and 10 CSR 20-8.300. When the state regulations referenced within these rules are found to be incompatible with the requirements of 10 CSR 20-6.300, the provisions of 10 CSR 20-6.300 will take precedence.

2. *[For NPDES permits only—]*In addition to the state requirements found in this rule, all CAFO NPDES permits shall be issued in compliance with applicable federal regulation as set forth in 40 CFR 122.42(e), and 40 CFR 412, Subpart A through Subpart D, July 1, 2009] 30, 2012, incorporated by reference, without any later amendments or additions, as published by the Office of the Federal Register, National Archives and Records Administration, Superintendent of Documents, Pittsburgh, PA 15250-7954.

3. Permits shall allow the CAFO to operate at a *[n] level of animal units [level] not to exceed its respective class size (i.e., Class IC or IB). When determining the appropriate classification, a rolling twelve- (12-) month average method will be used. The rolling twelve- (12-) month average shall at no time exceed the upper threshold limit of the CAFO's designated class size. CAFOs may change animal numbers and weights within its respective class size; however, such changes must not subsequently violate applicable effluent limitations found in section (4) of this rule or adversely impact the storage and handling capacities of the waste management system and may be subject to*

other appropriate conditions or limitations. If a Class I CAFO has reduced animal numbers and is operating as a Class II or smaller AFO, the operation may request termination of their operating permit. The rolling twelve- (12-) month average for the last twelve (12) months shall be submitted with the termination request. The department will then conduct an inspection to determine if the permit can be terminated. If the operation increases animal numbers to the Class I operating size, the owner or operator of the CAFO shall apply for an operating permit.

4. Permits shall require the CAFO operator to provide the recipient of any manure, litter, or process wastewater transfer, a current manure nutrient analysis.

5. Mortalities must not be disposed of in any liquid manure or process wastewater system, unless specifically designed to handle them. Mortalities must be handled in such a way as to prevent the discharge of pollutants to surface waters and prevent the creation of a public health hazard.

(B) Buffer Distances.

1. All Class I concentrated animal feeding operations shall maintain a buffer distance between the nearest animal confinement building or wastewater storage structure and any existing public building or occupied residence. The public building or occupied residence will be considered existing if it is being used prior to the start of the neighbor notice requirements of subsection (C) of this section or thirty (30) days prior to [construction] the date the department receives an operating permit application, whichever is later. Buffer distances shall be—

A. One thousand feet (1000') for concentrated animal feeding operations between 1,000 and 2,999 animal units (Class IC operations);

B. Two thousand feet (2,000') for concentrated animal feeding operations between 3,000 and 6,999 animal units (Class IB operations); and

C. Three thousand feet (3,000') for concentrated animal feeding operations equal to or greater than 7,000 animal units (Class IA).

2. When a CAFO proposes an expansion or modification but does not increase to a larger classification size, the buffer distance requirements shall be applicable only to the proposed confinement buildings and wastewater storage structures unless exempted by paragraph 3. of this subsection. Neighbor notice requirements of subsection (C) of this section shall apply to all existing and proposed confinement buildings and wastewater storage structures. If the proposed expansion or modification results in an increase to a larger classification size, the buffer distance and neighbor notice requirement of the larger classification size will apply to all existing and proposed confinement buildings and wastewater storage structures unless exempted by paragraph 4. of this subsection.

[2.]3. A concentrated animal feeding operation and any future modification or expansion of a CAFO is exempt from buffer distance requirements, but not neighbor notice requirements, when it meets all of the following criteria:

A. The CAFO was in existence prior to June 25, 1996; and

B. The CAFO does not expand to a larger classification size.

[3.]4. When existing animal feeding operations or concentrated animal feeding operations expand to a larger class size, the [setback] buffer distances shall not apply to the portion of the operation in existence as of June 25, 1996.

[4.]5. Buffer distances are not applicable to residences owned by the concentrated animal feeding operation or a residence from which a written agreement for operation is obtained from the owner of that residence. When shorter [setback] buffer distances are proposed by the operation and allowed by the department, the written agreement for a shorter [setback] buffer distance shall be recorded with the county recorder and filed in the chain of title for the property of the land owner agreeing to the shorter buffer distance.

[5.]6. The department may, upon review of the information contained in the [construction] operating permit application, includ-

ing, but not limited to, the prevailing winds, topography, and other local environmental factors, authorize a buffer distance which is less than the distance prescribed in this rule. The department's recommendation shall be sent to the governing body of the county in which such site is proposed. The department's authorized buffer distance shall become effective unless the county governing body rejects the department's recommendation by a majority vote at the next meeting of the governing body after the recommendation is received.

(C) Neighbor Notice Requirements [for Construction Permits].

1. Prior to filing an application for an [construction] operating permit with the department for a new or expanding Class I concentrated animal feeding operation, the following information shall be provided by way of a letter to all the parties listed in paragraph (3)(C)2. of this section:

A. The number of animals designed for the operation;

B. A brief summary of the waste handling plan and general layout of the operation;

C. The location and number of acres of the operation;

D. Name, address, and telephone number of registered agent or owner;

E. Notice that the [operation and the] department will accept written comments for a thirty- (30-) day period. The department will accept written comments from the public for thirty- (30/-) days [notice period will begin on the day the construction] after receipt of the operating permit application [is received by the department]; and

F. The address of the department office receiving comments.

2. The neighbor notice shall be provided to the following:

A. The department's Water Protection Program;

B. The county governing body; and

C. All adjoining owners of property located within one and one-half (1 1/2) times the buffer distances specified in subsection (3)(B). Distances are to be measured from the nearest animal confinement building or wastewater storage structure to the adjoining property line.

3. The [construction] operating permit applicant shall submit to the department proof the above notification has been sent. An acceptable form of proof includes copies of mail delivery confirmation receipts, return receipts, or other similar documentation.

4. All concentrated animal feeding operations shall submit, as part of the [construction or] operating permit application, an aerial or topographic map of the production area. The maps shall show the operation layout, buffer distances, property lines, and property owners within one and one-half (1 1/2) times the buffer distance.

5. The neighbor notice will expire if an [construction] operating permit application has not been received by the department within twelve (12) months of initiating the neighbor notice requirements.

(D) Inspections. [This subsection pertains to all CAFO operating permits.]

1. Permits shall require the following minimum visual inspections at the production area:

A. Weekly inspections of all storm water diversion devices, runoff diversion structures, and devices channeling contaminated storm water to the process wastewater storage;

B. Daily inspection of water lines, including wastewater, drinking water, and cooling water lines that can be visually observed within the production area. The inspection of the drinking water and cooling water lines shall be limited to the lines that possess the ability to leak or drain to wastewater storage structures or may come in contact with any process waste;

C. Weekly inspections of the manure, litter, and process wastewater impoundments. The inspection will note the level in liquid impoundments as indicated by the depth marker; and

D. [Periodically] Once per day when in use conduct leak inspections on equipment used for land application of manure or process wastewater.

2. Permits shall require the following minimum visual inspections at the land application area:

A. Monitoring of the perimeter of the application fields **once per day during land application** to ensure that applied wastewater does not run off the fields where applied;

B. Monitor for drifting from spray irrigation; and

C. Hourly inspections of aboveground irrigation pipelines when in use.

3. Permits shall require that any deficiencies found as a result of inspections be corrected as soon as possible.

(F) Annual Reports. This section *[pertains to]* is **required for NPDES operating permits only**.

1. NPDES operating *[P]* permits shall require the submission of an annual report that includes:

A. The number and type of animals confined at the operation;

B. Estimated amount of total manure, litter, and process wastewater generated by the operation in the previous twelve (12) months;

C. Estimated amount of total manure, litter, and process wastewater transferred to other persons by the operation in the previous twelve (12) months;

D. Total number of acres for land application covered by the nutrient management plan;

E. Total number of acres under control of the operation that were used for land application of manure, litter, and process wastewater in the previous twelve (12) months;

F. Summary of all manure, litter, and process wastewater discharges from the production area to waters of the state that have occurred in the previous twelve (12) months, including date, time, and approximate volume; *[and]*

G. A statement indicating whether the current version of the CAFO's nutrient management plan was developed or approved by a certified nutrient management planner*./;* and

H. **The actual crop(s) planted and actual yield(s) for each field, the actual nitrogen and phosphorus content of the manure, litter, and process wastewater, the data used to calculate and the results of annual calculations for maximum amount of manure, litter, and process wastewater to be applied, the amount of manure, litter, and process wastewater applied to each field during the previous twelve (12) months, the results of any soil tests for nitrogen and phosphorus taken during the previous twelve (12) months, and the amount of any supplemental fertilizer applied during the previous twelve (12) months.**

(G) Best Management Practices (BMPs)—Each CAFO subject to *[this section]* 10 CSR 20-6.300, that land applies manure, litter, or process wastewater must do so in accordance with the following practices:

1. Nutrient management plan. Operating *[P]* permits shall require a nutrient management plan be developed and implemented according to the requirements of 10 CSR 20-6.300(5). The plan must also incorporate the requirements of paragraph (3)(G)2. below. *[New CAFOs that apply for a construction permit must develop and submit a nutrient management plan with the construction permit application, unless otherwise stipulated by the department.]* The CAFO must begin implementation of the plan upon the date of operating permit coverage; *[and]*

2. Manure, litter, and process wastewater applied to the land application area must minimize phosphorus and nitrogen transport from the field to surface waters in compliance with the Missouri Concentrated Animal Feeding Operation Nutrient Management Technical Standard (NMTS) approved by the Clean Water Commission on March 4, 2009, in accordance with 40 CFR 123.36, as published by the Missouri Department of Natural Resources, Division of Environmental Quality, Water Protection Program, PO Box 176, Jefferson City, MO 65102-0176, which is hereby incorporated by reference into this rule without any later amendments or additions, or an alternative but equally protective standard subsequently approved by the department that includes, but is not limited to, the following:

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

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

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

D. Include conditions that will ensure manure, litter, and process wastewater applications are conducted in a manner that prevents surface runoff of process wastewater beyond the edge of the field. Such measures will include, but not be limited to, restricting the timing, soil conditions, and placement of manure during land application; and

E. Include appropriate land application setbacks that at a minimum require manure, litter, and process wastewater be land applied not closer than one hundred feet (100') from any down-gradient surface waters, open tile line intake structures, sinkholes, agricultural well heads, or other conduits to surface waters unless the operation complies with one (1) of the following compliance alternatives:

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

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

3. Land application shall occur during daylight hours only. Night time applications shall only occur when the department has approved the night time land application plan.

(H) Additional Requirements for Class IA *[Requirements. This section pertains to Class IA]* CAFOs only.

1. The owner or operator of any Class IA concentrated animal feeding operation with a wet handling system which also utilizes a flush system shall employ one (1) or more persons who shall visually inspect the *[wet handling system]* gravity outfall lines, recycle pump stations, recycle force mains, and appurtenances for any release to any containment structure. Visual inspections shall be made at least *[every twelve (12) hours with a deviation from the twelve- (12-) hour requirement not to exceed three (3) hours]* once per week. The inspections shall *[focus on]* also include the structural integrity of the collection system and containment structures along with any unauthorized discharges from the flush and wet handling systems. Records shall be maintained by the facility for a minimum of three (3) years on forms approved by the department.

2. Any unauthorized discharges that cross the property line of the facility, or enter the waters of the state from a Class IA concentrated animal feeding operation with a wet handling system that also utilizes a flush system, shall be reported to the department and to all adjoining property owners of the facility within twenty-four (24) hours.

3. Class IA concentrated animal feeding operation with a wet handling system which also utilizes a flush system shall receive at least one (1) on-site inspection by the department each quarter.

4. All Class IA concentrated animal feeding operations with a wet handling system which also utilizes a flush system shall have a

secondary containment structure(s) or earthen dam(s). The containment structure(s) or earthen dam(s) shall be sized to contain a minimum volume equal to the maximum capacity of flushing in any twenty-four- (24-) hour period from all gravity outfall lines, recycle pump stations, and recycle force mains.

5. All Class IA concentrated animal feeding operations with a wet handling system which also utilizes a flush system shall have an electronic or mechanical shut-off in the event of pipe stoppage or backflow. For new facilities, the shut-off shall be included as part of the construction permit application.

6. Class IA concentrated animal feeding operations (both new and those operations that wish to expand to Class IA size) are prohibited from the watersheds of the Current, Jacks Fork, and Eleven Point Rivers as described in 10 CSR 20-6.300(1)(B)9.D.

7. **The owner or operator shall visually inspect once per day any lagoon whose water level is less than twelve (12) inches from the emergency spillway. The inspection shall note the level of water below the emergency spillway. A record of these inspections shall be included with the operations annual report.**

(4) Design Standards and Effluent Limitations.

(A) Effluent Limitations Applicable to All Class I CAFOs.

1. New and expanding CAFOs that apply for an *[construction] operating permit [after the effective date of 10 CSR 20-8.300]* shall have manure, litter, and process wastewater management systems designed and constructed in accordance with the CAFO manure storage design standard rule 10 CSR 20-8.300.

2. Effluent limits for subsurface waters shall be in accordance with 10 CSR 20-7.015(7)(E).

3. *[For] NPDES operating permits [only—CAFOs] shall also comply with effluent limitations as set forth in 40 CFR Part 412, Subpart A through Subpart D, July [1, 2009] 30, 2012, without any later amendments or additions, as published by the Office of the Federal Register, National Archives and Records Administration, Superintendent of Documents, Pittsburgh, PA 15250-7954, which are hereby incorporated by reference.*

4. There shall be no discharge of manure, litter, or process wastewater to waters of the state from a CAFO as a result of the land application of manure, litter, or process wastewater to land application areas under the operational control of the CAFO, except where it is an agricultural storm water discharge. When manure, litter, or process wastewater has been land applied in accordance with subsection (3)(G) of this rule, a precipitation-related discharge of manure, litter, or process wastewater from land areas under the control of the CAFO is considered to be an agricultural storm water discharge.

5. A chronic weather event is a series of wet weather events and conditions that can delay planting, harvesting, and prevent land application and dewatering practices at wastewater storage structures. When wastewater storage structures are in danger of an overflow due to a chronic weather event, CAFO owners shall take reasonable steps to lower the liquid level in the structure through land application, or other suitable means, to prevent overflow from the storage structure. Reasonable steps may include, but are not limited to, following the department's current guidance on "Wet Weather Management Practices for CAFOs." These practices shall be designed specifically to protect water quality during wet weather periods. **A discharge resulting from a land application conducted during wet weather conditions is not considered an agricultural stormwater discharge and is subject to permit requirements.** The *[University of Missouri's Missouri Climate Center] department* will determine, within a reasonable time frame, when a chronic weather event is occurring for any given county in Missouri. The *[Missouri Climate Center's]* determination will be based upon an evaluation of the one-in-ten (1-in-10) year return rainfall frequency over a ten- (10-) day, ninety- (90-) day, one hundred *[twenty] eighty-* (1/2/80-) day, and three hundred sixty-five- (365-) day operating period.

(B) Additional Limitations for State No-Discharge Operating Permits *[at Class I CAFOs]. [A state no-discharge permit will*

serve as a CAFO "No-Discharge Certification" in accordance with 40 CFR 122.23(i).]

1. There shall be no discharge of manure, litter, or process wastewater into surface waters of the state from the production area.

2. If at any time a CAFO's waste management system is found to be discharging, the department may revoke the CAFO's no-discharge permit and require the CAFO to seek coverage under a NPDES permit.

3. If a discharge occurs at a CAFO with a state no-discharge permit, the owner or operator must submit to the department for review and approval the following documentation: a description of the discharge, including the date, time, cause, duration, and approximate volume of the discharge, and a detailed explanation of the steps taken by the CAFO to permanently address the cause of the discharge that will ensure that a discharge from this cause does not occur in the future.

4. When a discharge occurs at a CAFO, the CAFO will be allowed to maintain coverage under the no-discharge permit when the following two (2) conditions are met:

A. The department determines that the specific cause has been appropriately corrected so that the CAFO does not discharge; and

B. The CAFO has not had two (2) discharges at a given site for the same cause in any five- (5-) year period.

5. If a CAFO has two (2) separate discharge events brought about by the same cause, the department may terminate the no-discharge permit in which case the CAFO will be required to seek coverage under a NPDES permit.

[6. In accordance with 40 CFR 122.24(j), when a discharge occurs at a CAFO, the CAFO will not be in violation of the requirement to seek NPDES permit coverage so long as the CAFO has operated and maintained the CAFO in compliance with the permit.]

(C) Effluent Limitations Applicable to Class II and Smaller Sized AFOs. When a Class II or smaller sized AFO is designated as a CAFO by the department, the specific effluent limitations will be based upon the department's best professional judgment, *[but]*. The specific effluent limits shall not be more stringent than those for Class I CAFOs.

(5) Nutrient Management Plans (NMP)—In accordance with paragraph (3)(G)1. of this rule, operating permits shall require the development and implementation of a nutrient management plan. A portion of a CAFO's nutrient management plan includes the *[engineering design and construction-related] documents within a CAFO's [construction and] operating permit application. The plan also includes] and annual reports [and updates submitted to the department].* The plan must comply with the requirements found within the Nutrient Management Technical Standard which will satisfy the criteria in subsections (G), (H), and (I) below. **The NMP shall be maintained according to the requirements of paragraph (3)(G)2. of this rule. For NPDES permits only, any revisions to the NMP must be submitted to the department for review with the changes from the previous version identified. Substantial changes to the terms of the NMP incorporated into the NPDES operating will require a permit modification and a fifteen- (15-) day public notice period.** The plan must, at a minimum, address the following areas:

(6) Closure of Waste Storage Structures.

(B) Closure Requirements.*]*—

1. Lagoons and waste storage structures shall be closed by removal and land application of all wastewater and sludge;

2. The removed wastewater and sludge shall be land applied at agricultural rates for fertilizer not to exceed the maximum nutrient utilization of the land application site and vegetation grown and shall be applied at controlled rates so that there will be no discharge to waters of the state; and

3. After removal and proper land application of wastewater and

sludge, the earthen basins may be demolished by removing the berms, grading, and *(revegetation)* establish at least seventy percent (70%) plant density over one hundred percent (100%) of the site so as to provide erosion control, or the basin may be left in place for future use as a farm pond or similar uses.

AUTHORITY: section[s] 640.710, RSMo 2000, and section 644.026, RSMo Supp. 2014. Original rule filed June 1, 1995, effective Jan. 30, 1996. For intervening history, please consult the Code of State Regulations. Amended: Filed Jan. 26, 2016.

PUBLIC COST: This proposed amendment results in a net loss of revenue to the Department of Natural Resources. The aggregate revenue loss is estimated to be eighteen thousand eight hundred thirty-seven dollars (\$18,837) annually.

PRIVATE COST: This proposed amendment results in a net savings to private entities. The aggregate savings is estimated to be ninety-two thousand six hundred forty-five dollars (\$92,645) annually.

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 the Department of Natural Resources, Division of Environmental Quality, Water Protection Program, Diane Reinhardt, PO Box 176, Jefferson City, MO 65102. Comments may be sent with name and address through email to greg.caldwell@dnr.mo.gov. Public comments must be received by May 18, 2016. The public hearing is scheduled at a meeting of the Clean Water Commission to be held at 10 a.m., on April 6, 2016, at the Department of Natural Resources, Lewis and Clark State Office Building, LaCharrette/Nightingale Conference Rooms, 1101 Riverside Drive, Jefferson City, Missouri 65101.

